TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1914

No. [illegible] 91

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE MICHIGAN RAILROAD COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible]

FILED JANUARY 7, 1915.

(23,402)

(23,489)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 416.

THE MICHIGAN CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE MICHIGAN RAILROAD COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 13, 1914.

1 Supreme Court of the United States.

MICHIGAN CENTRAL RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHIGAN RAILROAD COMMISSION, Defendant in Error.

Record.

Petition.

(Filed June 17, 1910.)

STATE OF MICHIGAN:

Supreme Court.

To the Honorable the Supreme Court of the State of Michigan:

Your petitioner, the Michigan Railroad Commission respectfully shows unto the court:

1. That it is a body corporate organized and existing under Act No. 300 of the Public Acts of 1909, and that it is the successor to the Michigan Railroad Commission heretofore duly organized and existing under Act No. 312 of the Public Acts of 1907.

2. That the Michigan Central Railroad Company is a corporation organized and existing under the general railroad law of the State of Michigan and is the owner of, and engaged in operating railroads in said state and has been so engaged for more than five years last past, and that it is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of Michigan.

3. That among other lines of railroad owned and operated by the said Michigan Central Railroad Company is a line of railroad extending from the city of Detroit in the county of Wayne to the city of Bay City in the county of Bay, passing through the village of Oxford in the county of Oakland.

4. That the Detroit United Railway Company is a corpora-
2 tion organized and existing under the laws of the State of Michigan providing for the incorporation of street railways, and owning and operating a street railway in the city of Detroit and also owning and operating interurban railways in the vicinity of the city of Detroit and elsewhere in said state, and that it is a common carrier engaged in the transportation of passengers and property by interurban railroad between points in the State of Michigan.

5. That among other lines of interurban railroad owned and operated by the said Detroit United Railway Company is a line of railroad extending from the city of Detroit in the county of Wayne to the city of Flint in the county of Genesee and extending through the said village of Oxford in the county of Oakland, and also the

village of Ortonville in said county and the villages of Goodrich and Atlas in the county of Genesee.

6. That the people residing at the said villages of Orfonville, Goodrich and Atlas and at other points along the line of the said Detroit United Railway Company between the village of Oxford and the city of Flint have no facilities for the transportation of property by railroad other than is afforded by the said Detroit United Railway Company; and that if they desire to ship freight for transportation beyond the village of Oxford it is necessary to first ship such freight in the cars of the Detroit United Railway Company to the said village of Oxford and there transfer the same from the cars of the said Detroit United Railway Company to the cars of the said Michigan Central Railroad Company and that when freight is consigned to them at the said village of Oxford, it is necessary to transfer the same from the cars of the said Michigan Central Railroad Company at the said village of Oxford to the cars of the said Detroit United Railway Company to be transported by said Detroit United Railway Company to the consignees thereof along the line of the said Detroit United Railway Company.

3 7. That by the provisions of subdivision (*b*) of Section 7 of said Act No. 312 of the Public Acts of 1907, it is provided that:

"Where it is practicable and the same may be accomplished without endangering the equipment, tracks, or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes."

That said subdivision (*b*) was re-enacted in precisely the same language as subdivision (*b*) of Section 7 of said Act 300 Public Acts of 1909.

8. That on, to-wit the 14th day of January, A. D., 1908, Messrs. Sweers and Wilder, Guy N. Hart, and H. A. Profrock, all residing in the said village of Ortonville, Michigan, filed with the Michigan Railroad Commission a complaint against the said Michigan Central Railroad Company and the said Detroit United Railway Company, praying that the said commission make an order requiring the said Michigan Central Railroad Company and the said Detroit United Railway Company to make a physical connection of their

4 railroad tracks in the village of Oxford and to there interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of subdivision

(*b*), Section 7 of said Act No. 312 Public Acts of 1907, a copy of which said complaint is hereto annexed, marked "Exhibit A," and made a part of this petition.

9. That a similar petition was filed with the said Michigan Railroad Commission against the said Detroit United Railway Company and the said Michigan Central Railroad Company by D. M. Sriber, Ries and Pierson, and J. D. Cheney & Co., asking that a similar order be made by said commission a copy of which said complaint is hereto annexed marked "Exhibit B" and made a part of this petition

10. That thereafter and on, to-wit, the 28th day of April, A. D., 1908, the said petitions came on to be heard before the said Michigan Railroad Commission at the opera house in the said village of Oxford, after due notice to the said Michigan Central Railroad Company and the said Detroit United Railway Company; and that upon said day the said petitioners by their attorney and the said Michigan Central Railroad Company and the said Detroit United Railway Company by their attorneys appeared before said commission. That thereupon witnesses were sworn and examined before said commission and a full hearing had bearing upon the matters complained of by said petitioners.

11. That thereafter and on, to-wit, the 5th day of June, A. D., 1908, the said Michigan Railroad Commission handed down an opinion in said cause so pending before it as aforesaid, a copy of which said opinion is hereto annexed, marked "Exhibit C" and made a part of this petition.

12. That on the said 5th day of June, A. D., 1908, the said Michigan Railroad Commission made an order in said cause then pending before it requiring the said Michigan Central Company and the said Detroit United Railway Company on or before the 15th day of August, A. D., 1908, to connect their tracks at such point in the said village of Oxford as they should between themselves agree upon as most desirable, and there interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of subdivision (*b*) of Section 7 of said Act No. 312, Public Acts of 1907. That in said order it is further ordered that said Michigan Central Railroad Company and the said Detroit United Railway Company should on or before the first day of July, A. D., 1908, designate the point at which such physical connection of their tracks should be made and notify the said Michigan Railroad Commission, and that if the said railroad companies were unable to agree as to the said point of physical connection, that then the said commission on or after the said first day of July make a supplemental order therein determining the location of said connection; a copy of which said order is hereto annexed, made a part of this petition and marked "Exhibit D."

13. That thereafter and on, to-wit, the 27th day of November, A. D., 1908, the said Michigan Central Railroad Company and the said Detroit United Railway Company, not having designated the point at which said physical connection of their tracks was to be made and having been unable to agree upon said point, the said Michigan Railroad Commission made a supplemental order in said

cause in which it was ordered that the said physical connection of the tracks of said railroad companies be made at a point three hundred feet south of the switch frog located on the Michigan Central Railroad Company's passing track near the north line of the property of the said Detroit United Railway Company in the village of Oxford; and it was further ordered by said commission that the time for the installation of the said physical connection be extended to the eleventh day of December, A. D., 1908; a copy of which supplemental order is hereto annexed and made a part of this petition, marked "Exhibit E."

14. That the said physical connection of the tracks of the
6 said Michigan Central Railroad Company with the tracks of the said Detroit United Railway Company at the said village of Oxford was thereafter installed by said companies as ordered by said Michigan Railroad Commission and that said physical connection between the tracks of said companies is still maintained by said companies.

15. That your petitioner has been notified by the said Detroit United Railway Company of its willingness and ability to accept cars and carloads of freight from the said Michigan Central Railroad Company to be delivered to the people living along the line of railroad of the said Detroit United Railway Company between the said village of Oxford and the city of Flint under a service similar to that afforded by belt line and terminal railroads in this state; but that the said Michigan Central Railroad Company has hitherto refused and still continues to refuse to deliver cars and carloads of freight to the said Detroit United Railway Company at the said village of Oxford for transportation and delivery to the people residing along the line of the said Detroit United Railway Company outside of the limits of the village of Oxford between the said village of Oxford and the city of Flint.

16. That belt line and terminal railroads within this state vary in length from a fraction of a mile to fifteen miles or more; that cars and carloads of freight are transported to and from industries located along the line of such belt or terminal railroads to the tracks of railroad companies with which said belt lines and terminal railroads are connected, under a local switching charge or tariff, and that through billing of freight as between other railroads and belt and terminal railroads is not customary or usual.

17. That for the purpose of ascertaining the custom and conditions under which belt line and terminal railroads are constructed and operated the said Michigan Railroad Comimssion after due notice to the said Michigan Central Railroad Company and the said Detroit United Railway Company conducted a hearing
7 before it at its offices in the city of Lansing on the second day of March, A. D., 1910, at which time the said companies were represented before said commission by their respective attorneys. That at said hearing Mr. S. W. Brown, the General Superintendent of the said Michigan Central Railroad Company was sworn as a witness and gave his testimony; and that a copy of the proceedings then had before said commission and the testimony

of the said S. W. Brown is hereto annexed, made a part of this petition and marked "Exhibit F."

18. That it was and is the purpose and intention of said subdivision (*b*) of Section 7 of said Act 312, Public Acts of 1907 and said subdivision (*b*) of Section 7 of said Act No. 300, Public Acts of 1909 to afford railroad facilities for the transportation of carloads of freight to and from persons residing along the line of interurban railways where no such railroad facilities are afforded, and for that purpose to authorize the use of interurban railways under the same conditions except as to motive power as belt line and terminal railroads are used, namely, as switching roads.

19. That the distance between the village of Oxford and the city of Flint along the line of the said Detroit United Railway is twenty-eight miles; the distance from Oxford to Ortonville along the same line is ten miles and from Oxford to Goodrich sixteen miles and from Oxford to Atlas eighteen miles.

20. That your petitioner is authorized to proceed upon an order made under the provisions of said Act No. 312, Public Acts of 1907, by virtue of the provisions of Section 49 of said Act No. 300, Public Acts of 1909.

21. That said orders so made by said commission were duly served upon the said Michigan Central Railroad Company and the Detroit United Railway Company as required by law; and that no appeal from the said orders so made by the Michigan Railroad Com-
8 mission as aforesaid was taken by either the said Michigan Central Railroad Company or the said Detroit United Railway Company within the time limited therefor by the provisions of said Act No. 312, Public Acts of 1907.

22. That no other adequate remedy to compel compliance with the said orders so made by the said Michigan Railroad Commission is afforded except by proceedings in mandamus.

23. Your petitioner therefore prays that an order may be issued directed to the said Michigan Central Railroad Company requiring it to show cause why a peremptory writ of mandamus should not issue against it requiring it to comply with the order of the said Michigan Railroad Commission made upon the fifth day of June, A. D., 1908, and to deliver to the Detroit United Railway Company at the village of Oxford in the county of Oakland freight cars and freight in carload lots to be delivered by said company to shippers and consignees along the line of the said Detroit United Railway Company at the said village of Oxford and between the village of Oxford and the city of Flint, in the same manner and under the same general conditions except as to motive power as belt line railroads and terminal railroads are now used for like purposes; and to receive from the said Detroit United Railway Company at the village of Oxford freight cars and freight in carload lots delivered to it under like conditions; as ordered by said Commission and required by subdivision (*b*) of Section 7 of Act 312 Public Acts of 1907, and subdivision (*b*) of Section 7 of Act 300 Public Acts of 1909; and that a peremptory mandamus may issue accordingly.

24. And that such other and further relief may be granted as to the court shall seem meet.

MICHIGAN RAILROAD COMMISSION,
By C. L. GLASGOW, *Chairman.*

FRANZ C. KUHN, *Attorney General;*
GEO. S. LAW, *Assistant Attorney General,*
Attorneys for Petitioner.

9 STATE OF MICHIGAN,
County of Ingham, ss:

On this 9th day of June, A. D., 1910, personally appeared before me C. L. Glasgow, chairman of the Michigan Railroad Commission who made oath that he had read the foregoing petition by him subscribed and knows the contents thereof, and that same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

[SEAL.] SAMUEL H. KELLEY,
Notary Public, Ingham County, Michigan.

My commission expires January 5, 1913.

"EXHIBIT A."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

Filed January 14, 1908.

SWEERS & WILDERS, GUY N. HART, H. A. PROFROCK
vs.
DETROIT UNITED RAILWAY COMPANY, MICHIGAN CENTRAL RAILROAD COMPANY.

The petition of the above named Sweers & Wilders, Guy N. Hart and H. A. Profrock respectfully shows:

1. (State occupation and place of business.)

Sweers & Wilders, Flour Mill and Produce dealers, Guy N. Hart, Hardware dealer, H. A. Profrock, Produce dealer, all of Ortonville, Mich.

10 2. That the above named Railway Company is a common carrier, engaged in the transportation of persons and property by railroad between points in the State of Michigan.

3. That (here state concisely the matters intended to be complained of, numbering each succeeding paragraph), said complainants are residents of Ortonville, in the county of Oakland, in said state, and are shippers and receivers of freight.

4. That the only railroad entering the said village is the said Detroit United Railway and that all freight from outside points for

the village of Ortonville, and all freight from the village of Ortonville for outside points if transported by railroad must be transported by said Detroit United Railway Company.

5. That the tracks of the said Detroit United Railway and the tracks of the Michigan Central Railway at Oxford come together in Oxford in said county of Oakland.

6. That it is practicable to construct and maintain a physical connection between the said Michigan Central Railroad and the Detroit United Railway in the said village of Oxford for the interchange of cars, carload shipments, less than carload shipments and passenger traffic, and that such construction of physical connection and interchange of cars, carload shipments, less than carload shipments and passenger traffic may be accomplished at this point without endangering the equipment, tracks or appliances of either party.

7. That such physical connection and such interchange of cars, carload shipments, less than carload shipments and passenger traffic would be of very great benefit to the people of Ortonville and the surrounding country.

Wherefore, complainants pray that the aforesaid Railway Company be required to answer the charges herein and that after due hearing and investigation an order be made commanding said Railway Company to cease and desist from said violations of the acts referred to in said petition, and for such other and further order as the Commission may deem necessary and just in the premises. (Prayer may be varied so as to ask for the ascertainment of lawful rates or practices, and an order requiring the carrier to conform thereto.)

11

(Sgd.) SWEERS & WILDERS.
(Sgd.) GUY N. HART,
(Sgd.) H. A. PROFROCK,
Complainant-.

Dated at Ortonville, Mich., this 13th day of January, A. D. 1908.

"EXHIBIT B."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

Filed January 17, 1908.

D. M. SCRIVER, RIES & PIERSON, J. D. CHENEY & CO.
vs.
DETROIT UNITED RAILWAY COMPANY, MICHIGAN CENTRAL RAILWAY COMPANY.

Oxford, Mich.

The petition of the above named Complainants respectfully shows:

1. (State occupation and place of business.)

D. M. Scriver, Hardware Merchant, Goodrich, Mich.; Ries & Pierson, Meats, Groceries & Produce, Goodrich, Mich.; J. D. Cheney & Co., General Store, Goodrich, Mich.

12 2. That the above named Railway Company is a common carrier, engaged in the transportation of persons and property by railroad between points in the State of Michigan.

3. That (here state concisely the matters intended to be complained of, numbering each succeeding paragraph). Complainants are residents of Goodrich in the county of Genesee in said state and are shippers and receivers of freight.

4. That the only Railway entering the said village is the Detroit United Railway and that all freight from outside points for the village of Goodrich and all freight from the village of Goodrich for outside points, if transported by railroad, must be transported by said Detroit United Railway Company.

5. That the tracks of said Detroit United Railway and the tracks of the Michigan Central Railway Company at Oxford come together in Oxford in said county of Oakland, Mich.

6. That it is practicable to construct and maintain a physical connection between the said Michigan Central Railway Company at Oxford, Oakland county, and the Detroit United Railway Company in the said place mentioned for the interchange of cars, carload shipments, less than carload shipments, and passenger traffic, and that such construction of physical connection and interchange of cars may be accomplished at these points without endangering the equipments, tracks or appliances of either party.

7. That such physical connection and such interchange of cars, carload shipments, less than carload shipments, and passenger traffic would be of very great benefit to the people of Goodrich and surrounding country.

Wherefore, complainants pray that the aforesaid Railway Company be required to answer the charges herein and that after due hearing and investigation an order be made commanding said Railway Company to cease and desist from said violations of the acts referred to in said petition, and for such other and further order

13 as the Commission may deem necessary and just in the premises. (Prayer may be varied so as to ask for the ascertainment of lawful rates or practices, and an order requiring the carrier to conform thereto.)

(Sgd.) D. M. SCRIVER,
(Sgd.) RIES & PIERSON,
(Sgd.) J. D. CHENEY & CO.,
Complainants.

Dated at Goodrich this 16th day of January, A. D. 1908.

"EXHIBIT C."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

SWEERS & WILDERS, GUY N. HART, H. A. PROFROCK
vs.
DETROIT UNITED RAILWAY COMPANY, MICHIGAN CENTRAL RAILWAY COMPANY.

D. M. SCRIVER, RIES & PIERSON, J. D. CHENEY & CO.
vs.
DETROIT UNITED RAILWAY COMPANY, MICHIGAN CENTRAL RAILWAY COMPANY.

SWEERS & PROFROCK, WILLIAM LEECE, F. D. BRIGHAM
vs.
DETROIT UNITED RAILWAY COMPANY, GRAND TRUNK RAILWAY SYSTEM.

14 *Opinion.*

These proceedings are brought under Section 7 (*b*) of Act 312 of the Public Acts of 1907, which reads as follows:

"7 (*b*). Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes."

The complaint filed in the first named case sets up the following facts:

"1. Sweers & Wilders, flour mill produce dealers, Guy N. Hart, hardware dealer, H. A. Profrock, produce dealer, all of Ortonville, Michigan.

2. That the above named Railway Company is a common carrier, engaged in the transportation of persons and property by railroad between points in the State of Michigan.

3. That said complainants are residents of Ortonville, in
15 the county of Oakland in said State, and are shippers and receivers of freight.

4. That the only railroad entering the said village is the said Detroit United Railway and that all freight from outside points for the village of Ortonville, and all freight from the village of Ortonville for outside points if transported by railroad must be transported by said Detroit United Railway Company.

5. That the tracks of the said Detroit United Railway and the tracks of the Michigan Central Railroad at Oxford come together in Oxford in the said county of Oakland.

6. That it is practicable to construct and maintain a physical connection between the said Michigan Central Railroad and the Detroit United Railway in the said village of Oxford for the interchange of cars, carload shipments, less than carload shipments and passenger traffic, and that such construction of physical connection and interchange of cars, carload shipments, less than carload shipments and passenger traffic may be accomplished at this point without endangering the equipment, tracks or appliances of either party.

7. That such physical connection and such interchange of cars, carload shipments, less than carload shipments and passenger traffic would be of very great benefit to the people of Ortonville and the surrounding country."

The complaints in the two cases last named are identical in form with the first named case, that of D. M. Scriver, et al., also asking connection at Oxford between the Detroit United Railway and the Michigan Central Railroad, while Sweers & Profrock et al., ask connection at Flint between the Detroit United Railway and the Grand Trunk Western Railway.

In answer, the Michigan Central Railroad Company denies that it would be practicable to construct and maintain a physical connection between its railroad and the Detroit United Railway in the
16 village of Oxford, for the purposes set forth in the complaint, and denies that this Commission has any power or authority to order any such connection for the purposes mentioned in said complaint.

The Detroit United Railway denies the practicability of interchanging carload shipments after a physical connection shall have been established, without unreasonable expenditure of money in changing its road and equipment.

The Grand Trunk Western Company denies the practicability of constructing and maintaining physical connection between its road and the Detroit United Railway at Flint, as desired, for reasons hereinafter set forth, or that it is reasonable to require interchange of freight or passenger business at that point.

The complainants are residents and business men of the village of Ortonville, Oakland county, and of the village of Goodrich, Genesee county, and all the cases were heard together. Ortonville has a population of 351 and is located in a well settled country, the township of Brandon, in which it is situated, having a total population of 1,161 by the census of 1904. Atlas township, in which is the unincorporated village of Goodrich, has a population of 1,176. Both villages are located on the Flint Division of the Detroit United Railway, which runs from Oxford to Flint. Ortonville is ten miles from

Oxford and eighteen miles from Flint. Goodrich is sixteen miles from Oxford and twelve miles from Flint. Through Oxford runs the Dertoit & Bay City Division of the Michigan Central Railroad and the Pontiac, Oxford & Northern Railroad, and through Flint are the Grand Trunk Western and the Pere Marquette Railroads.

Davison, a point on the Grand Trunk Western, is eight miles from Goodrich, and is the shortest teaming distance to a steam railroad from that point. Grand Blanc, a point of the Pere Marquette Railroad, is about eight miles from Goodrich. The country surrounding Goodrich and Ortonville and all along the Detroit United
17 from Oxford to Flint is an agricultural community. The soil of this section is good, producing hay, grains and various farm products.

The Detroit United Railway is at present operated entirely by electric motive power, and the Michigan Central and the Grand Trunk are operated by steam. At the present time shipments of freight to or from points on the Detroit United between Oxford and Flint, if brought to Oxford by the Michigan Central, or to Flint by the Grand Trunk, must be transferred from the steam railroad cars to Detroit United cars. The cars in use on the electric road are smaller, two being required to carry the load of one of the cars on the steam railroad. Sidings have been so arranged at Oxford by the defendants herein that cars may be placed side by side and freight there transferred from one car directly into another. When this is done, the expense of the transfer is about three dollars per car. Oftentimes it cannot be done within the required time by reason of inability of consignee or shipper to secure cars of one road or the other at the proper time and thus an additional expense in the form of demurrage charges must be incurred. To this is also to be added the expense, delay and inconvenience frequently caused the shipper or consignee at Goodrich or Ortonville, who is obliged to go to Oxford to look after such transfer. Practically no interchange, even by transfer, is now made at Flint.

The statute referred to in this case is intended to do away with the expense, delay and inconvenience attending such transfer of carload shipments from one car to another, by requiring the two roads to form a physical connection and interchange such business in the same manner and subject to the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes. The question of through billing is not involved. The questions before the Commission are three: (*a*) Is physical connection between the tracks of the defendants herein practicable at Oxford and at Flint; (*b*)
18 Can the interchange of business between the two companies there be accomplished without endangering the equipment, tracks or appliances of either party; and (*c*) Are the facts and circumstances in this case such as to reasonably justify the Commission in requiring such connection and interchange?

Authority of the Commission.

The statute herein quoted is explicit in language, which expressly confers on this Commission the authority which we are now asked to exercise. Whether or not this statute be valid, in whole or in part, is a judicial question which it is not the province of this Commission to pass upon.

Practicability of Connection.

The Michigan Central Railroad Company, having, as previously recorded, denied the practicability of the construction and maintenance of physical connection between their tracks and those of the Detroit United Railway, "for the purpose mentioned in said complaint" it is pertinent to notice that on the hearing in such case no evidence was introduced by them to sustain such allegation, and that said plain and unsupported statement was permitted to remain as their full reply to said complaint as to physical connection.

The Grand Trunk Western Railway Company deny in their answer that it is practicable to construct and maintain the physical connection asked for at Flint, because:

"The point mentioned is on the Flint "Cut-Off," so-called, of this defendant, that is to say on the piece of road extending from Belsay, East of Flint, to Swartz Creek, West of Flint, which was built at a large cost and is maintained and used solely for the purpose of expediting freight traffic through and around Flint. On that piece of road, called the "Cut-Off," no trains stop ordinarily. There
19 is no taking on or putting down of freight and no taking on or setting off of cars, but trains go through intact and without stopping on their way from Port Huron to Chicago and in the opposite direction. So that to require them or any of them to stop at this point and set off or pick up cars would be to defeat the very purpose for which the land was bought and the tracks were built and are maintained."

The testimony of Mr. A. B. Atwater, Assistant to President of the Grand Trunk Railway System, shows, however, that there are now several sidings located on the said "cut off" for the accommodation of factories on its line and that "in time there will probably be additional sidings there or extensions, if business demands it." That freight shipments now designed for those sidings are handled by the local switch engines in the yards. Mr. Egan, Superintendent of the Grand Trunk, also stated that cars for those sidings are handled at present in that manner. That at the crossing with the Detroit United an interlocker is maintained under charge of a day and a night man. General Manager Brooks, of the Detroit United, stated that at this point "The work, so far as making the physical connection is concerned, can be done."

In view of the testimony of the representatives of the Grand Trunk, it cannot be said that cars cannot be transferred at this point after a connection is made. The arguments that are advanced against it would have equal force as against placing of cars on in-

dustrial tracks in that vicinity, but nevertheless the company is placing cars on some such tracks, and anticipates an increase in that business. Their own practice refutes the theories advanced. The crossing of the tracks is at grade and the evidence and an inspection of the premises convinces us that construction of the connection is feasible.

The Detroit United Railway Company does not question the practicability of a connection with the Michigan Central tracks at Oxford, but expressly admits it to be practicable in its answer on
20 file. Sidings from the Detroit United and the Michigan Central parallel one another, and are as close together as is feasible, on the same grade, and General Manager Brooks, of the Detroit United, states that no engineering difficulties are in the way of making the connection. T. T. Irving, Resident Engineer of the Grand Trunk Western, estimated the expense of constructing said connection at $500.00.

Practicability of Interchange.

The answer of the Detroit United Railway urges the impossibility of their hauling loads of freight in steam railroad cars, without an unwarranted expenditure of money, reciting:

"That it is constructed and operated upon a private right-of-way except when the same passes through the village of Ortonville, at which place it is constructed along and upon the streets and highways in said village or a portion of the same, and also in the city of Flint, where it is constructed and operated upon the streets and highways of said city of Flint.

(*b*) That at certain points in the village of Ortonville on said line, the curve from one street onto another is so short that it would be a very difficult, if not an impossible matter to haul ordinary freight cars as are now in use on steam railroads around the said curve; that to utilize said track, in the village of Ortonville it would be necessary to reconstruct said curve or to change the right-of-way of the railway and acquire private right-of-way of greater or lesser extent; that it would also be necessary to reconstruct many of the passing switches and side tracks along the line of railway of this defendant in order that they may be used for the passing of freight cars of the character used on steam railroads; that to do said business on an electrical power would require a very great increase in the capacity of
21 the power house and electrical equipment generally, together with all other changes necessary to transact the business which said petitioners desire to have transacted over this defendant's railroad, would require the expenditure of upwards of $250,000 and this defendant shows that the amount of business to be transacted and the earnings which would be likely to come to this defendant in the same, would not be sufficient in amount to reasonably justify the making of the expenditures which would be necessary. That the necessity for enlarging and increasing the power plant and equipment would only be obviated by the use of steam locomotives."

In support of this, we have the testimony of F. W. Brooks, Gen-

eral Manager of the Detroit United Railway, stating that the trolley poles on their line are too close to the tracks to permit the handling of large steam railroad cars; that difference in size of flanges and tread on their cars and the cars of steam railroads would make handling of the latter undesirable; that one curve exists in the line near Ortonville that would need to be reconstructed; that replacing of bond wires and an increase in power would be necessary to enable them to handle freight in cars from the steam railroads with electric motive power; that to increase their power supply it would be necessary to enlarge their power plant, enlarge their substation and increase the capacity of transmission wires; that they were uncertain whether under the law, they could condemn such further right-of-way as might be necessary and whether they would be permitted to use steam as a motive power by adjacent property owners.

Evidence was introduced and not disputed which showed, however, that when the Detroit, Lake Orion & Flint, as this branch of the Detroit United was first known, was first built, a connection was established with the tracks of the Pontiac, Oxford & Northern Railroad, a steam railroad, at Oxford and that carload shipments
22 of freight were there received from the steam road by the electric line and delivered to consignees at Ortonville and Goodrich, steam being used as a motive power. These steam railroad cars, fully loaded, were for a year or two handled in this manner successfully and without damage to them or to the tracks or equipment of the electric lines, and no accidents occurred. It is also shown that the roadbed of the electric line has been much improved since that time and is now in better shape to handle such traffic. That the road is standard gauge, the rail is the same pattern and weights as is used on many steam roads, and that there are no heavy grades on said line offering resistance to freight traffic.

The Common Council of the village of Ortonville, through one of its representatives, assured the Commission and General Manager Brooks, of the Detroit United Railway, that they would permit said Detroit United to so change the location of their tracks in the streets of said village so as to reduce the curves complained of so they could be used without difficulty.

It does not appear that any objection was ever raised to the use of steam as motive power by the electric company or to the transporting of freight over their line, and there is now no intimation that any such objections would be raised. On the other hand, the bringing of the present proceeding is an indication of the desire of the people of those communities that freight be transported by the electric line. Furthermore, the franchise granted to the electric company by the townships of Brandon and Atlas expressly provides that freight shall be hauled. The Detroit United is at present hauling its own freight cars over this line, using electric motive power. Witnesses testified to seeing two to four cars of gravel drawn by one motor car. Two cars of crushed stone, carrying forty tons each have been drawn by one motor car. One such motor car at Oxford is shown to have pulled out of the transfer switch and up grade a train of eleven cars,

eight of them loaded with hay and coal. The Commission
23 have gone over the entire line between Oxford and Flint, conducting an inspection of same, including the location of the proposed connections at Oxford and Flint, and upon such inspection and the facts introduced in evidence we are satisfied that the handling of freight in carloads in steam railroad cars over this line is practicable and may be accomplished without endangering the equipment, tracks or appliances of the Detroit United Railway, the Michigan Central Railroad Company, or the Grand Trunk Western Railway Company and without involving either company in unreasonably large expenditures. Whether steam or electricity may most economically and satisfactorily be used as a motive power is a question which the Detroit United Railway Company can best solve for itself in the light of its own experience hereafter.

Reasonableness of Requiring Interchange.

The evidence in this case amply sustains the allegations of complainants in these cases that interchange between the electric and steam lines at the points in question would result in very substantial benefits to these villages and the surrounding communities. It is shown that fifty cents less per ton is paid for hay at Ortonville than at the neighboring town of Grand Blanc. Fifty cents more is charged per ton for coal at Ortonville than at Oxford, and these differences in price are due to the expense incurred in the transfer at Oxford of said commodities from the cars of the steam line to those of the electric. Stock for shipment must be driven to Thomas, Davison and other points. Elevator facilities have not been provided at Goodrich or Ortonville because of lack of shipping facilities.

As to defendant Michigan Central Railroad Company, small sacrifice is asked in order to secure to these people the benefits they ask. It will have to expend its proportion of the amount necessary to install the connection, but no further expenditure
24 is involved for it. Were the contemplated elevator at Goodrich one to be established at Oxford on the line of the Michigan Central, or at Flint on the "cut off" of the Grand Trunk, side track facilities would be provided for it by that company, in view of the business to be derived. The business to be derived by the steam railroad company from Ortonville, Goodrich and surrounding country, via these connections and the Detroit United Railway gives promise of being considerable in amount. Thereby it is believed the Michigan Central Railroad Company and the Grand Trunk Western Railway Company will be the beneficiaries by such connections. They have furthermore their duty as common carriers to perform. This is not limited to those industries situated immediately on their own lines. They derive their charter from the State of Michigan and owe a duty as common carriers to the entire state. They must give greatest consideration to those most accessible to their operations, for otherwise their greatest good would not be accomplished. They must further, however, give as great consideration to those not immediately upon their lines as they can consistently under the circumstances and without interfering with their operations.

The Detroit United Railway should give to the complainants herein the best service and the greatest benefits it can from the operation of its road, and as General Manager Brooks expresses it, "let the public make such use of its tracks as is proper and is warranted by the law." This company is now engaged in the transporting of freight as well as passengers on the line in question. It handles this freight both in carload and less than carload lots. It is difficult to see why it should be less willing to haul a car from Oxford to Goodrich which has been loaded in Bay City or Cheboygan and delivered to it by another line, than to haul the same freight in its own equipment after transfer. There is indeed in the present case an added obligation upon this defendant to perform the service asked for by complainants. Section 9 of the franchise granted to the Detroit, Lake Orion & Chicago Railway by the township of Brandon in 1899 reads: "Said grantee, its successors and assigns, shall carry freight over its street railway system for hire as far as permitted by law."

Section 9 of the franchise granted to the same company by the township of Atlas reads: "Said grantee, its successors and assigns, shall have the right to carry freight over its street railway system for hire and shall carry all freight as permitted by law."

It is testified also that when the promoters were soliciting the right-of-way they told the farmers and residents along the line that "they would handle any kind of freight, so far as the law would allow them." In consideration of that, they asked and were given a bonus of about $100.00 per mile of road, the townships of Brandon and Atlas each contributing $8,000.00 in addition to the right-of-way.

The statute under which this proceeding is brought is not radical, it being expressly provided that through routes cannot be required. Its reasonable enforcement, accepted by the companies, both steam and electric, in the proper spirit, should accomplish much for the public good and advance the day when common carriers will be common carriers, and whether operated by steam, electricity or other motive power, will work together as common servants of the public need.

An order will accordingly issue, requiring the Michigan Central Railroad Company and the Detroit United Railway Company to connect their tracks at such point as they deem best in the village of Oxford on or before August 15, 1907, at their joint expense. An order will likewise, issue, requiring the Grand Trunk Western Railway Company and the Detroit United Railway Company to connect at the crossing of their lines in South Flint within the same time and at their joint expense.

CASSIUS L. GLASGOW,
Chairman.
GEORGE W. DICKINSON,
Commissioner.
JAMES SCULLY,
Commissioner.

26 "EXHIBIT D."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

Session of the Commission, Held at Its Offices in the City of Lansing, the Fifth Day of June, A. D. 1908.

SWEERS & WILDER, GUY N. HART, H. A. PROFROCK, Complainants,

vs.

DETROIT UNITED RAILWAY, MICHIGAN CENTRAL RAILROAD COMPANY, Defendants.

Complaint having been filed with the Michigan Railroad Commission by the complainants herein, making application that the said defendants be required to construct a physical connection between their tracks in the village of Oxford, Oakland county, and there interchange cars, carload shipments, less than carload shipments, and passenger traffic, and due notice thereof having been given said defendants, and hearing having been had with reference thereto at which hearing all parties in interest were represented and heard, and an inspection of the premises in question having been had by the Commission on due notice to all parties in interest, and it appearing to the Commission that such physical connection is practicable and may be accomplished without endangering the equipment, tracks or appliances of either party and that the said facilities for said interchange of traffic between the said two railroads are reasonably demanded by the facts and conditions existing.

27 Now therefore, it is hereby ordered, for the reasons set forth more fully in the opinion of the Commission this day filed, that the said Michigan Central Railroad Company and the said Detroit United Railway Company, on or before the 15th day of August, A. D., 1908, connect their tracks at such point in the said village of Oxford, Oakland county, as they shall between themselves agree upon as most desirable, and thereafter there interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of section seven of Act 312 of the Public Acts of 1907.

It is further ordered that the said defendants shall on or before the 1st day of July, A. D., 1908, designate the point at which such physical connection shall be made and notify the said Commission of such designation and that if the said defendants are unable to agree as to the said point, then the said Commission shall on or after the said first day of July make a supplemental order herein, determining the location of said connection.

It is further ordered that the expense of equipment, installation and maintenance of said connection shall be borne half and half by the said defendants herein.

CASSIUS L. GLASGOW,
Chairman.
GEORGE W. DICKINSON,
Commissioner.
JAMES SCULLY,
Commissioner.

28 "EXHIBIT E."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission, Held at Its Offices in the City of Lansing on the Twenty-seventh Day of November, A. D. 1908.

SWEERS & WILDER, GUY N. HART, H. A. PROFROCK, Complainants,
vs.
DETROIT UNITED RAILWAY, MICHIGAN CENTRAL RAILROAD COMPANY, Defendants.

The order of this Commission in this case, entered under date of June 5, 1908, having provided that if the said defendants should not, on or before the first day of July, A. D., 1908, designate the point at which the physical connection therein required should be made and did not notify this Commission of such designation, and if the said defendants should be unable to agree as to the said point, then this Commission should, on or after the said first day of July, make a supplemental order herein, determining the location of said connection, and it having been established that the said defendants have not designated the said point and have not notified the said Commission of such designation and have been unable to agree as to the said point,

Now therefore, by virtue of the authority vested in us by law, it is hereby ordered, That the connection be made at a point three hundred feet south of the switch frog located on the Michigan
29 Central Railroad Company's passing track, near the north line of the property of the Detroit United Railway in Oxford.

And it is further ordered, That the time for installation of said connection be extended to and include the eleventh day of December, A. D., 1908.

CASSIUS L. GLASGOW,
Chairman.

JAMES SCULLY,
Commissioner.

"EXHIBIT F."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

At a Session of the Michigan Railroad Commission, Held at Its Offices in the City of Lansing on the 2d Day of March, A. D. 1910.

In re Physical Connection Between the Michigan Central Railroad and the Detroit United Railway at Oxford, Mich.

Present: Hon. Cassius L. Glasgow, Chairman, Hon. George W. Dickinson and Hon. James Scully, Commissioners, and Attorney George S. Law, of the Attorney General's department.

Appearances: Attorney Robson, S. W. Brown, General Superintendent, W. C. Rowley, G. F. A., Mr. Webb, representing the Michigan Central; and Mr. Vandemark appeared in behalf of the D. U. R.

30 *Transcript of Testimony.*

CHAIRMAN: The hearing this morning is upon the motion of the Commission, for the purpose of determining the custom and conditions under which belt line railroads are constructed and operated. It appears that for sometime in the past the residents along the line of the D. U. R. made a complaint of poor service on that line, and for the purpose of bettering the same asked that physical connection be established between the Michigan Central and the Detroit United. That connection was made as was required under 7 (*b*) of Act 312 of the Public Acts of 1907, which required that for the purpose of the exchange of carload and less than carload freight between steam and suburban or interurban lines a switch connection should be established. The connection was established between the tracks of the Michigan Central and the Detroit United, and the Commission notified by the Detroit United of their willingness and ability to accept freight from the Michigan Central, to be delivered to the people living along the line of the D. U. R. The Michigan Central Railroad took the position that according to their interpretation of the statute the belt line should serve the village of Oxford only, and that they, therefore, would not permit their cars to go beyond the corporate limits of the village of Oxford. The Commission did not believe that that represented the spirit of the law, or that it was what was in the mind of the legislature when the Act was drafted and passed.

Therefore, it is our desire this morning to bring out just what the custom is in regard to the construction and operation of belt lines, whether the fact that the line may be straig-t in one direction would vary the conditions as to whether it should be circular; whether it must of necessity cater to the needs of shippers of freight in the immediate vicinity or in the city or village in which the connection

was made or whether it could be understood to be as is the one
31 between Flint and Oxford, on the straight line; so that we have asked such officials of the Michigan Central as we thought were best posted to give us that information to appear this morning and answer such questions as might be put to them. We had asked to have Mr. Coil here this morning, possibly not necessary, but he promised he would be, in view of the fact that we want to get some definite information in regard to the belt line service at Bay City and Saginaw, but probably the other officers who are present can give us that information as well as Mr. Coil.

Mr. ROBSON: I didn't understand that Mr. Coil was desired especially, but rather any officer who might furnish such information along the lines of the letter which was sent to me, and for that reason I didn't ask Mr. Coil to come, but did ask Mr. Brown, who is probably familiar with that.

I perhaps ought to say, before any testimony is taken, on behalf of the Michigan Central, that its position in this matter is perhaps pretty well defined in Mr. L'Hommedieu's letter of December 24, 1909, and with that statement, Mr. Brown, of the Operating Department, Mr. Webb, of the Engineering Department, and Mr. Rowley, of the Traffic Department, are here and ready to give such information as you desire, and if such things develop which we think will be in violation of our position, we desire to reserve such proper objection to the same.

I want to say further, as I wrote the Commission, having taken hold of the matters in the legal department so recently, many of these things are in a measure unfamiliar to me, and so I requested Mr. Butterfield to be here if he could, and he intended to be here by way of Grand Rapids from Manistee but he missed his connection, so if it gets beyond matters, beyond what I am able to comprehend, I ask that we may hold the matter open until Mr. Butterfield gets here. He will be here about 12 o'clock. I would like to have that privilege reserved.

32 S. W. BROWN, being duly sworn, testifies and states, as follows:

(Examination by Mr. LAW:)

Q. What is your position?

A. General Superintendent of the Michigan Central.

Q. Are you familiar with the construction of belt line and terminal railroads and the conditions under which they are operated, in a general way?

A. Yes sir.

Q. And do you know about the belt line and terminal railroads at Saginaw and Bay City?

A. No sir.

Q. Simply at what places?

A. I don't know of anything at Saginaw or Bay City that has ever been referred to as a belt line.

Q. How about terminal railroad?

A. Or terminal railroad.

Q. Is there any distinction between belt line and terminal railroads?

A. No. Terminal railroads, under that name, perform the same service as railroads which are called belt lines, and vice versa.

Q. Is there any difference in the methods of construction?

A. Well, no. In the case, there is, at Toledo, a belt going along the line of the Toledo Terminal Railroad.

Q. Is there any difference as to whether one is built circular, around a city or extending in a straight line, or are both of them built so as to take in a certain city?

A. Both. Both for the purpose of use at some particular city.

Q. Are they not also built for the purpose of connecting with industries which are not upon the main line of any branch railroad property?

A. There are very few that I know of that don't also serve industries in that particular locality.

33 Q. Now, as to the belt line and terminal railroads at Detroit. Can you indicate the different roads with which you are familiar and the distance, the length of the lines, in a general way?

A. There are only two at Detroit that I know of, possibly that's all there are. One of them is, I should say, 3 miles in length; that's the Michigan Central Belt. The Detroit Belt Line, and approximately 3 miles in length. It extends from our Bay City Division to a point south of Jefferson Avenue. Then there is another belt line that is longer, I presume in the neighborhood of 7 miles, maybe 9 miles, possibly 10. It is still being constructed. It extends from Woodward Avenue to the north, and Jefferson Avenue to the east. I think it is considered 7 miles from our Bay City Division to Jefferson Avenue, and then between our Bay City Division and Woodward Avenue, I am not sure just now how much is constructed.

Q. What is the Detroit Manufacturers Railroad?

A. The Detroit Manufacturers Railroad is a line running close to the river front for a distance of about a mile. I imagine it serves industries along the river front, such as Park-Davis, and the Morgan Wright Rubber Company, and quite a large number that I couldn't call off-hand.

Q. What is the greatest distance, the greatest length of any terminal railroads or belt line railroads in Detroit?

A. Well, I would say that 10 miles, perhaps, would cover the longest belt line road in Detroit now.

Q. Isn't there a belt line road in Wyandotte, called the Wyandotte Terminal Road?

A. I believe there is, but I think it is clearly a private institution, serving some particular industry.

Q. You don't know whether it is organized as a belt line or terminal railroad?

A. No, I don't.

34 Q. Now, are you familiar with the conditions under which cars are taken by the belt line or terminal railroads from the railroad companies and delivered to consignees?

A. Yes, sir. On what is called a switching charge in the published tariff.

Q. No other bill of freight as between the railroad and the belt line or terminal railroad?

A. No. If it is for some particular concern at Detroit, it is noted on the bill that it is for a certain track, and that track may be on a belt line, and it goes to its destination under a switching charge.

Q. Who collects that switching charge?

A. The belt line.

Q. What arrangement do they have with reference to it. Do they have any arrangement with reference to the length of time cars may be kept from the railroad company by the belt line railroad of the consignee. What rules govern the length of time?

A. Only that the industry is under the car service rules.

Q. And those charges, of course, for the switching charge, is fixed for the belt line or terminal railroad?

A. In the published tariff.

Q. Are you familiar with the conditions at Oxford, Michigan?

A. In a general way. I have been there a number of times, passed through there.

Q. Can you tell where the industries at that point are located with reference to the points where the physical connection between the D. U. R. and M. C. is?

A. No, I wasn't down to see that.

Q. In a general way, how large a place is it.

A. A small place, perhaps from 1,000 to 2,000 inhabitants.

Q. You don't know what industries are located there?

A. None of any promise.

Q. You don't know the location of them?

A. No.

35 CHAIRMAN: You wouldn't think, Mr. Brown, from what you do know of Oxford and its population, etc., that it would really require belt line service, would you?

A. No, I shouldn't think so.

CHAIRMAN: You don't contend that a belt line necessarily has to be any particular length or in any particular direction in order to answer as a belt line, do you?

A. Well, Yes, I do. I think that it doesn't need to be of any particular length. The length would depend and does depend on the size of the community or city that it serves. The principal of a belt lines is to get around the desirous cities and leading industries located in that territory and connect with the several railroads. It has been found as cities develop it is a hard matter to get freight through the heart of the city, and the railroads all center themselves for the purpose of relieving congestion, and for the prompt movement of freight the belt line is built, and there may be 5 or 10 railroads connected up by that belt line.

CHAIRMAN:

Q. Is there ever a condition in which the belt line is operated as a belt line and doesn't connect at both ends with the track of a railroad?

A. I don't know of a belt line or terminal railroad other than what is a local proposition, pure and simple.

CHAIRMAN: What is the length of the belt line operated by your people in this city, Lansing?

A. Well, I wouldn't be able to tell you that, Mr. Glasgow, I might say from 3 to 4 miles.

Mr. ROBSON: You refer to the Lansing Manufacturers road?

Mr. GLASGOW: I refer to the belt line which I supposed the M. C. owned and operated.

Mr. ROBSON: I didn't understand they owned any; they operate two different tracks.

CHAIRMAN: Where does the belt line which serves the industries around the outer part of Lansing connect with your tracks here in the city?

36 A. Why, between Lansing and North Lansing.

CHAIRMAN: With what tracks does the other end of this belt line connect?

A. I would like to have Mr. Webb answer that question.

CHAIRMAN: I think you told Mr. Law that your company didn't operate any belt line at Bay City.

A. No sir, I never heard of any of our tracks in Bay City called a belt line. We have switching tracks scattered pretty well over the east side of Bay City, but it has never been termed as a belt line that I know.

CHAIRMAN: In the construction of the new road that is being put through by Handy Brothers, does the map show the crossing of the Michigan Central belt line at Bay City?

A. I don't know.

CHAIRMAN: Is there any particular portion of your track in Bay City that is longer or serves more industries, or if it might be called a belt line, than any other tracks you have there outside of your main line?

A. Our Water Street line is perhaps the longest line of that character and serving more industries than any other one in Bay City, and if that is what you refer to, I have always heard it termed "the Water Street track."

CHAIRMAN: What did you understand that Mr. L'Hommedieu meant in writing his letter, that the terminal belt line connected at Oxford meant simply to serve the village of Oxford?

Mr. ROBSON: I don't understand Mr. L'Hommedieu's statement to be exactly that. He hasn't undertaken to define the belt line, but rather, to say the service which he would give.

CHAIRMAN: Mr. Brown, could you tell the commission when the Michigan Central put in that physical connection at Oxford, did they have in mind at that time the only service they would render through that physical connection would be to serve the residents of the village of Oxford?

A. I believe so, Mr. Glasgow. I have never heard them
37 express themselves clearly on that point, but feel sure that was his idea at the time.

CHAIRMAN: What would be the conditions, Mr. Brown, where the

service to the industries of Oxford could be better served than they are served now by merely keeping the public team track on your own line?

A. I don't know if there are any conditions, unless there are some industries on the D. U. R. that are not on either of the steam railroads at Oxford, that could be reached by the D. U. R.

CHAIRMAN: Mr. Brown, what would be your reasons for looking upon the connection at Oxford requiring the transfer of your carload shipments over the D. U. R. as different from what they would be in transferring them to a regular belt line road?

A. Well, the reason the D. U. R. are taking business indiscriminately, they might take it to most any point, and sometimes, interchange with any railroad, state or interstate, for business on that line. No belt line railroad was ever built to make interchange, to handle cars in the same maner as a full fledge railroad handles them, or other than in a local manner.

CHAIRMAN: What in your judgment would be the material difference as to whether you permitted your cars to go over to the line of the D. U. R., for the purposes intended in this particular case, to be turned over to the people along the line, or, in other words, to give your idea, where the act says, "These connections shall be made and shipment of carloads or less than carloads shall be turned over to such suburban or interurban railroads in the same manner and under the same general conditions, the same as motive power, as to belt line railroads."

Mr. ROBSON: I think the question propounded by the Commission, this last question, is rather one of believing than one of fact.

38 Mr. SCULLY: If you have got a legal objection to the question it's all right, but if you haven't we would like to have an explanation from the operating department.

Mr. ROBSON: I would like to state this objection. I don't want to argue it; I simply want to state our position in reference to it, and that is, that the railroad company, notwithstanding the statute, is not obliged to turn its cars over to any road, be it to steam road or electric, so that notwithstanding the statute in reference to it, the whole thing is a matter of agreement between the roads; they may or may not, do as they see fit, except that they do it as a matter of agreement.

Mr. SCULLY: Do I understand you, Mr. Robson, that in the operation of belt or terminal lines, they may or may not deliver cars?

Mr. ROBSON: Exactly. That is to say, to answer your question by illustration: Suppose A, B, C and D construct a belt line. I don't understand that we are under any obligation by law or statute to turn over cars to that belt line unless we see fit to agree with them.

Mr. SCULLY: Even though they had physical connections?

Mr. ROBSON: Even though they had physical connections.

Mr. SCULLY: What can you say about the statute here, that says they must do that. What about the course of this statute that compels them to do it?

Mr. ROBSON: My answer is that the statute attempting to do that is

invalid and in violation of the Constitution, in the 14th amendment. In other words, they can't take our property.

Mr. LAW: Well, as I understand it, the order in this case didn't require the delivery of cars by the Michigan Central to the D. U. R. except as between Oxford and Flint, along the line of the D. U. R., and not at Flint. Simply points between Oxford and Flint. Those places seem to be Atlas, Ortonville, and Goodrich.

Mr. ROBSON: I don't understand the point.

39 Mr. LAW: It says the points between Oxford and Flint.

Mr. ROBSON: I doubt if that language is used. It is to change and interchange cars at this intersection, at Oxford.

Mr. SCULLY: Mr. Brown, do terminal lines and belt lines own their own line equipment, as a rule?

A. Well, they always own their own motive power.

Mr. SCULLY: Do they own freight cars?

A. Some own their equipment and some don't. Some merely act as switching lines over the local track as between railroads and industries.

Mr. SCULLY: You understand the Detroit United is ready to do the switching at these points if the cars are turned over to them?

A. We assume they are.

Mr. SCULLY: Your objection isn't because of the fact that the D. U. R. isn't ready to interchange cars, to furnish you as many cars as you furnish them?

A. Well, I haven't thought of that. I don't know that the D. U. R. have any cars of their own.

Mr. SCULLY: You don't make that as an objection?

A. No, because I don't know that they have any cars.

Mr. SCULLY: As I understand, belt lines and terminal lines, as a rule don't interchange cars in fact, don't own any?

A. Some do and some don't.

Mr. SCULLY: Now, is the belt line necessarily connected with two railroads, one at each terminal, don't they simply extend around the city?

A. They must connect at either end, but they connect at one end with some intervening road.

Mr. SCULLY: They would necessarily connect at both ends?

A. Not necessarily. They may connect in their route with two or more roads, but they may have no connection at one end. They usually are built with the object in view of their pushing along to some other connection at the other end.

Mr. DICKINSON: Mr. Brown, is there any terminal or belt line in Michigan that have equipment of their own?

40 A. Well, the Michigan Central, of course, own and operate a belt line, operated by Michigan Central equipment, as well as equipment delivered by other roads, where we interchange with those roads. The only belt line I know of in Michigan, Mr. Dickinson, are those at Detroit, and if you call this one at Lansing, that railroad. Possibly a line we have at Jackson might be termed a belt line, although it isn't, in the true sense of the word; and our local track at Bay City that goes out to serve industries. Other than the

Michigan Central owning equipment for the Detroit belt lines, I don't know of any line in Michigan that owns its own equipment, nor do I know of any other belt line.

CHAIRMAN: What line operates the Detroit Manufacturers' belt line in Detroit?

A. The Michigan Central. It is an addition of the Detroit belt line, taken as a separate institution. It is nothing more or less than a switching track.

CHAIRMAN: Your company control it, do they?

A. I don't know just under what arrangement we operate it.

CHAIRMAN: You furnish the equipment for it?

A. There is no equipment used there except cars used for loading and loads set in for unloading for different industries reached by that track, the same as the spur track from the Grand Trunk over to the Reo Motor Works here at Lansing.

CHAIRMAN: Then all charges in connection with that service are made by and settled with your company?

A. I think so. Mr. Rowley can answer that question.

CHAIRMAN: What can you tell me about the Detroit, Delray & Dearborn belt line.

A. There is no such thing. There is a Detroit, Delray & Dearborn cut off, operated and owned by the Michigan Central, for getting things over to the south without coming to Detroit.

CHAIRMAN: Are there any industries located along that line?

41 A. I think there is a little plant on our connection with the Toledo. Possibly one or two other small industries. That is in no sense, however, a belt line.

CHAIRMAN: They are not served under like conditions as would be a belt line so that the service might properly permit the line to be called a belt line?

A. No sir, it's a short road from the west to the south.

CHAIRMAN: Do you know anything about the Detroit & Western belt line, is there such a belt line as that in Detroit?

A. No sir.

CHAIRMAN: Do you know of any tracks that would be properly named the Detroit & Western?

A. No sir, never did.

(Mr. Glasgow shows witness a tariff published by Detroit & Western.)

A. That's the first one I have ever heard of.

CHAIRMAN: It has the word "Michigan Central" across it.

A. I don't see the Michigan Central man's name on it.

Mr. SCULLY: Mr. Brown, you said there was some objection on the part of your company because you might be obliged to deliver cars promiscuously connecting in this way. If there is any doubt—If this order was amended so as to provide for the delivery of cars at Ortonville, Goodrich and Atlas, the only three places, would your road object to that?

A. Yes sir. There is absolutely no difference.

Mr. SCULLY: What would be the particular difference between that and a terminal or belt line delivery?

A. The cars would be taken out of the local territory and we would loose control of the equipment. We are able on all of the belt line railroads to follow our cars up and check them to see about the car service feature.

Mr. SCULLY: Why wouldn't you be able to follow up those cars if they went to these points on the D. U. R. just as much as you would on a belt line or terminal railroad?

42 A. Because they are outside of the local point to which the delivery is made.

Mr. SCULLY: You don't mean to say you follow up those cars with your own motive power?

A. Our own yard men and checkers.

Mr. SCULLY: Would there be any objection to your going over the D. U. R. with your yard men and checkers?

A. Yes sir.

Mr. SCULLY: In what way? Do you think the D. U. R. would object?

A. I think so. They don't ordinarily send those car clerks on railroads to follow up cars in that way. We have different sections of any village or city, covered by different clerks and they cover a certain territory.

Mr. SCULLY: Do you know how far Atlas is from Oxford?

A. No sir.

Mr. SCULLY: Have you got any particular fear, as the General Superintendent of this railroad, that the Detroit United wouldn't return your cars after delivery at these points?

A. I couldn't say we would have any particular fear; we have never had any experience along that line.

Mr. SCULLY: Have you any reason to doubt about them returning the cars?

A. No, I haven't. I presume we could say reasonably, we would expect the cars would be returned.

Mr. SCULLY: I understand that is your particular objection, the cars would go out of your reach. In what way would the M. C. be injured by turning these cars over to the D. U. R. if they can reasonably expect they would be returned?

A. Well, in the first place, as I said before, it is the same thing as delivering to the Grand Trunk, Pere Marquette or any other railroad at a junction point with regular interchange of business. The D. U. R. have no equipment that I know of to give us in exchange for the equipment we would give them.

43 Mr. SCULLY: Neither a belt line, as you have already stated, or a terminal railroad,—will you tell us the particular objection, which this order is intended to cover, although it might not. You said the particular objection was the delivery of cars in that way. You say there is no reason to expect the cars wouldn't be returned. What is the other objection?

A. I can't answer that question, only it is the general principal, they don't want to interchange cars with the other line.

Mr. SCULLY: You don't want to encourage that interchange. That objection that you just stated, is that because you don't want to encourage competition with the steam lines and injure the business to that extent?

A. No, we expect to have competition between electric and steam lines. Have it now very largely, on freight as well as passenger traffic. It's a step in a direction which we don't want to go.

Mr. SCULLY: What's the reason for it?

A. We have a reason but I don't care to state it.

CHAIRMAN: Mr. Brown, do you know what other railroads serve the industries at Oxford, besides the Michigan Central?

A. No sir, I don't know anything about any industries at Oxford.

CHAIRMAN: What other railroads cross at Oxford?

A. The P. O. & N.

CHAIRMAN: These towns, Atlas, Ortonville, Goodrich, etc., aren't served, so far as you know, by any other road than the D. U. R.

A. So far as I know.

CHAIRMAN: With the connection established between the Detroit United and the Michigan Central, wouldn't it have a tendency to increase the traffic on the Michigan Central from Ortonville, Atlas and these points, going on the Michigan Central tracks whereas by the teams now they might be turned over to the Grand Trunk?

44 A. We can't and you can't answer that question. They are just as liable to go to Flint and use the P. M.

CHAIRMAN: There is no physical connection at Flint, is there?

A. There might be if this thing is allowed to go on.

CHAIRMAN: If the residents at Goodrich, Atlas and Ortonville had to draw their produce to Oxford for shipment, you certainly would have to take the same chance then as the Grand Trunk would?

A. We think we have the advantage of the Grand Trunk at Oxford.

CHAIRMAN: Wouldn't is be a reasonable assumption that if the shippers could get as good a rate from the Michigan Central as from the Grand Trunk, that with the opportunity to load their car at Ortonville or Atlas, Michigan Central equipment could go down to Oxford and from there on your tracks east. Wouldn't it be the assumption you would get a very large majority of that traffic?

A. I don't know where Ortonville is, Mr. Chairman. I don't know anything about the physical conditions you speak of as to those definite points. I never have been over the D. U. R. between Oxford and Flint, but I am willing to say, it is a reasonable assumption we would.

CHAIRMAN: At least you wouldn't feel it would be a detriment to your road in getting in this traffic. The Commission have in mind, in asking for compliance with the orders, whether the compliance therewith would result in injury to the road or not; that's one reason why I wanted to bring out that idea. We have been led to believe it would help the business of the Michigan Central if that arrangement was entered into.

A. That's a traffic matter you are speaking of now and Mr. Row-

ley came here for the purpose of answering questions of that character.

Mr. SCULLY: Do you know of any reason why the tracks of
45 the Detroit United from Oxford to these points named, Ortonville, Goodrich and Atlas are not in proper condition to receive your cars?

A. I don't know anything about the tracks.

Mr. SCULLY: You don't make any objection on that ground?

A. I can only answer in this way, why, by the proper expenditure of money, it couldn't be put in shape?

Mr. SCULLY: If this was a steam line between Oxford and Flint, wouldn't is be to your advantage to exchange freight between Oxford, Atlas, Goodrich and Ortonville? Would you desire to do it?

A. No sir, I don't believe I would.

Mr. SCULLY: You would prefer to have it all go to Flint over the Grand Trunk. Supposing you had physical connections at Flint, and also at Oxford, and that was a steam line, wouldn't you be anxious to get that business from those lines rather than have it go to Flint and go over the Grand Trunk?

A. If the D. U. R. from Oxford to Flint was converted to steam line today, I don't think we would want to make connection if we could help it.

Mr. SCULLY: Why not?

A. We have reasons I don't care to state.

Mr. GLASGOW: Mr. Brown, I think you stated a few minutes ago you didn't care to let your cars leave your tracks on the tracks of the Detroit United by reason of the difficulty in keeping track of them. Would you find it any more difficult to keep track of cars going over the Detroit United than you would to any other railroad, steam line?

A. Why, no. We would know when we delivered cars to the Detroit United but we wouldn't know anything further about them unless there was some car system between the Detroit United and some other railroads.

Mr. GLASGOW: Isn't it a fact Mr. Brown, you have been in the habit of turning your cars over to the Detroit United at some other points?

46 A. Not to my knowledge.

Mr. GLASGOW: Have you any knowledge of ever having turned your cars over to the Greenville siding?

A. That's the Pere Marquette.

Mr. GLASGOW: Have you any knowledge of your turning cars over to the D. U. R. at St. Clair?

A. I haven't. That's the Grand Trunk.

Mr. GLASGOW: Do you let your cars go on the rails of steam roads which haven't equipment of their own?

A. Yes, we interchange cars in some cities with belt lines that have no equipment, except their locomotives.

Mr. GLASGOW: And does the amount of equipment which a steam railroad may be able to exchange with you affect your custom in exchanging equipment with them?

A. The custom I think is affected by the fact that all railroad-own equipment and we — in giving them our cars and we expect cars from them in return.

Mr. GLASGOW: If that were the case, it would put me in a different light, but that don't appear to be the fact in this case. There are two roads in the Upper Peninsula which have no rolling stock whatever. Did you ever offer any objection to furnishing equipment to the P. O. & N.?

A. When we had it to furnish. I don't know as we ever did.

Mr. GLASGOW: Did you ever have any great amount of their equipment on your rails?

A. I don't think any great amount, because they haven't got any great amount. I don't know how many cars the P. O. & N. own, but they own some.

Mr. LAW: If cars were to be delivered by the Michigan Central to the Detroit United at Oxford, for transportation to Ortonville, Goodrich and Atlas, on the line of the Detroit United between Oxford and Flint, but not at Flint, under the same conditions as cars are delivered to the belt line and terminal railroads, would
47 there be any difference between that service and the service that is had between the belt line railroads and yourselves except you would go outside of the immediate vicinity of the point where the physical connection was made?

A. There would be no difference between that service and the service between our line and the P. O. & N.

Mr. LAW: Would there be any difference, any whatever, between your company and the belt line or terminal railroad and that?

A. Perhaps in delivering the cars it would be very identical; one would be a belt line and the other wouldn't.

Mr. LAW: Would there be any difference in conditions except that they didn't meet in the immediate vicinity of Oxford?

A. The only difference I would see is they would get away from our supervision and control and our representatives at Oxford. In delivering to belt lines we have our representatives with our cars on that belt line.

Mr. LAW: At all points on that belt line?

A. Yes sir.

Mr. LAW: Couldn't your agent at Oxford keep track of the cars on the D. U. R.

A. He couldn't do it. He couldn't go out to Ortonville and these other points that are several miles away.

Mr. LAW: Why couldn't he keep track of these cars, assuming they weren't delivered at Flint, merely at these points between. What would be the objections and the difficulty anyway of his keeping track of them?

A. He could keep track, of course, of cars delivered to and received from the electric line, and all they have on their line. Supposing they hadn't been sent beyond Ortonville, we would know they were on the line between Ortonville and Oxford.

Mr. SCULLY: Do any of these belt lines and terminal lines in other states extend outside of the city limits?

A. I don't know what they do. Yes. I guess the belt line
48 at Detroit, some parts of it are outside of the city limits, and there are likely some in Toledo. Some places they might extend outside of the limits of the city. That could be possible and still be serving a local community.

Mr. DICKINSON: Mr. Brown, what benefits are to be derived from your company keeping track of the cars if they were delivered on any other road besides your own, in view of the fact they would pay you for the time they were delayed beyond your rails?

A. That's the reason we keep track of them, and for the reason of getting returns when we need them; we want the cars.

Mr. DICKINSON: Would you compel belt lines to turn your cars back any quicker than you would the Detroit United?

A. I don't know as we would do that.

Mr. DICKINSON: You do keep track of cars, of their immediate location?

A. We keep track of all interchanges.

Mr. DICKINSON: You would keep track of interchanging at Oxford if they went over there too?

A. Yes sir.

Mr. DICKINSON: So you wouldn't have the knowledge of just exactly one of the three points they are located at when they have left your rails?

A. No sir.

Mr. DICKINSON: There wouldn't be any particular object in knowing, would there?

A. Not if we connected with the D. U. R.

Mr. DICKINSON: If they were connected with the belt line at Oxford and they turned their cars over to the belt line, you wouldn't be in a better position to get them back would you?

A. Of course, we would have to depend on the Detroit United to turn them back.

Mr. DICKINSON: You already stated you would expect return from the Detroit United under ordinary conditions, you
49 would naturally assume the cars would be returned to you if they went on the D. U. R., as soon as they were unloaded?

A. Yes, that's the supposition.

CHAIRMAN: Mr. Brown, there has never, to your knowledge, been any arrangement between the steam lines of the state to refuse to turn their equipment over to electric lines, has there?

A. No sir, not to my knowledge.

CHAIRMAN: You are aware, are you not, that the other steam lines of the state are turning their equipment over to the D. U. R.

A. I am not aware of that fact, no sir.

CHAIRMAN: I think—possibly we may be in error—but I am inclined to think the Pere Marquette are turning their cars over at the Greenville Siding to the D. U. R., and the Grand Trunk have been turning their cars over to the D. U. R., the Pere Marquette turn their cars over to the M. U. R. in this city.

A. Where are these cars taken over?

CHAIRMAN: Nine miles north of DeWitt, between here and St.

Johns. Mr. Brown, are you aware of the fact, that the Toledo and Western, which is an electric line, have been in the habit for some time, not only of turning their equipment over, but of prorating with the Wabash?

A. I don't know, I am not aware of it.

CHAIRMAN: I think that's all, Mr. Brown.

(Direct examination of witness by Mr. ROBSON:)

Q. Mr. Brown, your attention has been called to the belt lines at Detroit. Among others, the Detroit Belt Line and the Detroit Manufacturers Railroad. Those are each independent corporations, are they not?

A. Yes sir.

Q. But as a fact are operated under some agreement or arrangement between these companies and the Michigan Central. Operated by the Michigan Central, in fact, are they not. Its actual
50 operation is in charge of the Michigan Central?

A. Yes sir.

Q. And that is true also of the operating movements or transportation of cars over the Detroit Manufacturers Railroad?

A. At the connection at Jefferson Avenue with the Manufacturers Railroad they are operating in the same manner as they operate a belt line.

Q. Now, with reference to cars that pass from your own line to some other line, where they are off from your own line, they are liable to injury, are they not; injury to the equipment?

A. Yes sir.

Q. And if the line itself has no cars, you then would be furnishing the connecting line its entire equipment, wouldn't there, and there would be delay depending upon the loading and unloading, as well as other delays, in keeping those cars from the use on the Michigan Central line, that would be true, would it not?

A. Yes sir.

Q. Now, as I understand you to define a belt line, or the belt line service, it is a service to a single locality or community and its vicinity?

A. Yes sir.

Q. But you can't say that belt lines are any particular length, can you, as to fix a terminal a number of miles one way or the other?

A. No sir.

Q. And the length of it, and the shape, as being circular or otherwise, depends upon the particular locality or community served?

A. Yes sir.

Q. Now, where cars are passed to another road, there are contract arrangements, are there not, between the respective roads,
51 covering the matter of service, repairs and all items of that sort?

A. Yes sir.

Q. And that, as you understand it, is a matter of independent contract between the parties themselves?

A. Sometimes that is a matter between two lines, more a matter of National agreement.

Q. Have you any knowledge, Mr. Brown, as to whether the Detroit United is authorized to carry and move freight through the villages of Oxford, Ortonville, Atlas and Goodrich, move freight cars through the villages?

A. I have no knowledge of that.

Q. Have you any knowledge of the conditions of its tracks beyond Oxford?

A. I haven't.

Q. Or in the city of Oxford?

A. I haven't.

Q. I think you stated you had no information that they had any cars to exchange with you?

A. As far as I know, they haven't.

Q. So that if it is true that the D. U. R. has no equipment by way of freight cars, the fact of an interchange here would be practically that the Michigan Central would be supplying the D. U. R. with all its equipment for that purpose?

A. Yes sir.

Q. And that would be true whether it went over to Ortonville, Goodrich, Atlas or these other stations as well as Oxford?

A. Yes sir.

Mr. LAW: Does the Michigan Central have physical connections with any other terminal or belt line railroad except those operated by the Michigan Central; does it at any point in the city?

A. Well, I can't answer that unless you tell me where the belt lines are that you have in mind. You speak about a Pere Marquette belt line in Bay City.

52 Mr. LAW: Does it connect with any other terminal railroad in Detroit, other than——

A. The two I mentioned in Detroit, one of which the Michigan Central operate, and the other is jointly operated.

Mr. LAW: Now, you stated in answer to Mr. Robson's question, that if cars were delivered to another company, they would be subject to injury and delay. That is true as to belt lines and terminal railroads, is it not?

A. Yes, of course, any cars you deliver off your line to be loaded or unloaded would be subject to more or less delay.

Mr. LAW: Those two belt lines that you speak of in Detroit, are these two belt lines or terminal railroads that are connected with the Michigan Central operated as independent corporations?

A. Yes sir. I will say "Yes sir" to the Detroit Terminal Railway. I think that the Detroit Belt is a separate corporation.

Mr. ROBSON: I think it is, Mr. Brown, and independent corporation, under lease with the Michigan Central.

Mr. LAW: That is true with the Manufacturers Belt Line too, is it not; it is an independent corporation?

A. I wouldn't be able to answer that.

Mr. LAW: And you say the cars are interchanged under a con-

tract with the belt line, between the railroad company and the belt line or terminal railroad?

A. Interchanged under a switching road tariff.

Mr. LAW: Is it a written contract between the two corporations?

A. Not necessarily so, only general rules governing the interchange of cars.

Mr. LAW: Then your understanding is as to the switching charge?

A. Yes, tariff or something in the form of that. The Detroit and Western Railway have a published tariff for the different switching charges between these belt lines.

53 Mr. LAW: I believe you stated you didn't expect any interchange of cars with the belt line or terminal railroads; they haven't any rolling stock?

A. As a rule they haven't. Some have.

Mr. LAW: Do you interchange with them when they have rolling stock, cars, but that isn't true of terminal or belt line railroads?

A. My knowledge is they haven't.

Mr. LAW: I think that's all.

Mr. GLASGOW: Mr. Brown, do any belt lines over which you operate in Detroit, have any shops of their own, for making repairs to cars that might be injured?

A. No sir.

Mr. GLASGOW: Well, would you think then the danger would be any greater to turn cars over to the D. U. R. at Oxford, for injury, so far as its use would be, than it would be for a belt line?

A. I don't know if we could consider it so. We would expect the D. U. R. to repair our cars if they injured them.

Mr. GLASGOW: You are aware the D. U. R. have a steam engine at Oxford for the purpose of handling cars?

A. I am not aware of it.

Mr. GLASGOW: What is the lightest rail on which you permit your equipment indiscriminately to pass upon on your system?

A. Well, that's a rather difficult question to answer. We have certain tracks, district, for carrying engines or cars of a certain weight, and we have a great many different weights of cars and engines.

Mr. GLASOW: Would you consider on a road reasonably well ballasted that a 70 pound rail is capable of carrying most any cars that would be turned over by your company?

A. Yes sir. I think 70 pound rails would probably carry most any car.

Mr. GLASGOW: You said one objection was you didn't
54 want to furnish your equipment to the D. U. R., because they didn't have any to furnish in return. Isn't it true that a very large number of foreign cars would be turned over to the D. U. R. at Oxford and wouldn't be M. C. equipment at all?

A. That's a fact, but Michigan Central would be on the line.

Mr. GLASGOW: Could be, but not always.

A. Yes, always.

Mr. GLASGOW: You might have a Hocking Valley car of coal

come over your tracks, and it wouldn't necessarily mean you would have a Hocking Valley car to change for it, would it?

A. Yes, that's what I mean. It might not result in an exact exchange, but while the M. C. has Hocking Valley cars on their line the Hocking Valley has M. C. cars on their lines.

Mr. GLASGOW: I think Mr. Robson asked you the question, that belt lines are supposed to serve only one town, and I think, if I remember correctly, you answered "Yes." Isn't it a fact, Mr. Brown, that in some cities the belt line goes outside of the city property. It may be inside of the city, but some time it goes out and takes care of suburban lines, for instance, at Chicago?

A. There is an E. G. & E. Railroad, which is a full fledged railroad, only it owns some equipment which does light work outside of the city of Chicago entirely. In fact, while they have tracks into Chicago, they have part of the line without. That is a full fledged railroad, not a belt line.

Mr. GLASGOW: I think you have admitted the conditions of the transfer from your rails to the D. U. R. at Oxford was similar to what they would be with belt lines, and the whole proposition summed up is that the Michigan Central don't want to encourage the exchange traffic with the D. U. R. Outside of that the danger is no greater, inconvenience is no greater. You simply don't care to encourage that kind of business. Isn't that really the whole substance of the proposition?

55 A. We don't want to encourage connection with any trolley line.

Mr. SCULLY: Were you present during the hearing on the petition for the physical connection?

A. No sir, Mr. L'Hommedieu was here, I think. I'm not sure.

Mr. SCULLY: Did you understand, as an officer of the Michigan Central, that the purpose of asking for that physical connection was to transport freight to these points named, Ortonville, Goodrich and Atlas. Did you understand it at that time that that was what the petitioners were asking for, for the physical connection so that they could have freight delivered in carload lots from your line to these points?

A. No sir.

Mr. GLASGOW: Mr. Brown, you don't know whether the D. U. R. have any right to operate through the streets of Oxford, Ortonville, Atlas and Goodrich with steam or not. I want to ask you whether it is of any importance to the Michigan Central in making this exchange, whether that is up to the Michigan Central whether the D. U. R. have the right to operate by steam or not?

A. I don't know just what the *affect* might have, whether they did or didn't have such rights.

Mr. GLASGOW: You wouldn't expect to determine that before you turned over your cars. If you were willing to make this connection, you wouldn't be interested, you don't see where it would interest the M. C. from the operating standpoint?

A. No, not from the operating standpoint.

Mr. GLASGOW: Mr. Brown, did your company ever make any

proposition to the D. U. R. following this physical connection, completion of the conditions under which you were to interchange carload freight?

A. I don't know.

56 Mr. GLASGOW: If such proposition had been made and declined, you would have knowledge of it, wouldn't you.

A. Not necessarily.

Mr. GLASGOW: Who would have?

A. The General Manager.

Mr. GLASGOW: Do you know whether the D. U. R. made any proposition to your company after the completion of the physical connection, looking toward the transfer of carload freight?

A. I don't.

Mr. GLASGOW: Mr. L'Hommedieu would be the only man who would know?

A. Yes sir, unless some of the other gentlemen have knowledge of it.

Mr. ROBSON: Reference has been made to the use of foreign cars, and if this order is made for interchange, that a foreign car would pass from the Michigan Central to the D. U. R. at this point. While you have a foreign car in your possession and use, is there some arrangement between the foreign road and your road concerning the repair and maintenance of that car while in your use?

A. We would be responsible to the owning road for that car, and our only relief would be in getting an agreement from the D. U. R. which would protect us.

Mr. ROBSON: In other words, you have entered into some agreement, substantially, along the lines of any arrangement you may have, with other foreign roads in that respect?

A. Yes sir.

Mr. ROBSON: And it is on that basis that this interchange of cars is made. That is one basis of interchange, that you will protect the car, keep it in proper repair while in your charge?

A. Yes sir.

Mr. GLASGOW: I think you stated, Mr. Brown, that if a car was injured while on the Detroit United Tracks, you would expect them to repair it or be to the expense of having it repaired?

57 A. Yes sir, I would, so long as they would be willing to enter into an agreement?

Mr. GLASGOW: So that that wouldn't place any particular burden upon you.

Mr. SCULLY: The Michigan Central isn't raising those conditions, that the counsel raises, and the reason for not delivering this freight to the D. U. R.

A. No sir.

Mr. ROBSON: You mean that, Mr. Brown, that if it was desirable or deemed proper to do so, those questions of repair could be covered by an agreement, the same as you have with other roads?

A. Yes sir, both parties being agreeable. I might add, that in that connection, the owner of the Hocking Valley car might object to that car being delivered to the D. U. R., and those conditions

occur frequently. Some roads, in Chicago for instance, they turn their cars over to other roads, with the understanding that it shall not go beyond Chicago. A foreign railroad in delivering us a car restrict the use of that car by us, and we are in duty bound to respect their instructions.

Mr. GLASGOW: I think that's all, Mr. Brown.

Mr. DENMARK, being duly sworn, testifies, as follows:

(Examination by Mr. GLASGOW:)

Q. Does your road stand willing to accept any cars the M. C. may turn over?

A. As I understand from Mr. Brooks, the physical connection has been made with the M. C. over at Oxford, and the company, the Detroit United, has a locomotive at Oxford, but simply upon the line at the present time. Curves have been straightened somewhat, and electrical overhead work so arranged that the locomotive could be used in running from Oxford to these places that have been mentioned. Of course, the locomotive is there for the purpose of moving cars. I don't know of any other equipment.

58 Mr. ROBSON: Have you any equipment other than the locomotives?

—. I couldn't state, that's something I have no knowledge of.

Mr. ROBSON: What can you say, Mr. Denmark, as to the franchise or other privileges under which you are operating under these separate villages you mention, Goodrich, Atlas, Ortonville and Oxford, as to whether they permit the hauling of freight cars?

A. Of course, I know that Oxford is a village. The terms of the contract there I am not familiar with, and I wouldn't care to give any statement without looking at it. I am inclined to think, however, that the places called Atlas, Goodrich and Ortonville are not organized under the village Act, simply parts of the township, as I recollect it. Wherever the road runs in the highways proper, I am not in position at the present time to state what rights there are, what the contract rights are.

Mr. ROBSON: How heavy a car are you prepared to haul?

A. I'm not a railroad man, I don't know.

Mr. ROBSON: Carry 150,000 pounds?

A. I don't know anything about that.

Mr. ROBSON: That's all.

Mr. GLASGOW: Is there any gentlemen present, interested in this connection, in the delivery of freight, who can give any information on the question as to whether there is any objection on the part of the residents along the line of the D. U. R. between Oxford and Flint, any objection to the use of a steam engine by the D. U. R. in the delivery of freight, at the present time?

(By GUY M. HART.)

A. So far as Ortonville is concerned, I don't think there are any objections, but I understand that further west, one or two parties

always have and do. Mr. Pierson here knows them. In
59 other words, I think there is clear sailing over there. Our town has given them permission to run anything there, steamboats if they like. This new franchise permits them to run locomotives in the street.

I, Walter Kreinbring, stenographer appointed by the Commission to take down the testimony in this case, do hereby certify the above and foregoing to be a true and correct transcript of all the testimony taken on the investigation in this case, and that same has been carefully compared by me with my original notes and that it is a correct statement of the evidence and proceedings had on such investigation.

Dated this 18th day of March, 1910.

WALTER KREINBRING.

Subscribed and sworn to before me this 18th day of March, 1910.

SAMUEL H. KELLEY,
Notary Public, Berrien County, Michigan.

My Commission expires Jan. 5, 1913.

60 *Answer.*

(Filed July 20, 1910.)

STATE OF MICHIGAN:

Supreme Court.

Answer of the Michigan Central Railroad Company, Respondent, to the Petition of the Michigan Railroad Commission and the Order Issued Thereon, Requiring This Respondent to Show Cause Why a Peremptory Writ Mandamus Should Not Be Issued, as Prayed in said Petition.

This Respondent, the Michigan Central Railroad Company, answering, respectfully shows:

1. It admits the matters alleged in the first paragraph of said petition.

2. It admits the matters set forth in the second paragraph of said petition, and, further answering, says that it now is and for more than five years last past has been engaged in the transportation of passengers and property moving from points in the several states and territories of the United States, and in Canada, to the State of Michigan and to other states and territories of the United States, and from points in the State of Michigan to points in other states and territories of the United States, and in Canada, and as such railroad and common carrier now is, and for upwards five years last past, has been transporting passengers and property in interstate and foreign commerce over railroad lines owned or operated by it in the

States of Illinois, Indiana, Ohio, Michigan and in the Dominion of Canada.

61 3. Answering the third paragraph of said petition, it admits that it operates a line of railroad extending from the city of Detroit in the county of Wayne to the city of Bay City in the county of Bay, passing through the village of Oxford, and says that said line of railroad is owned by the Detroit & Bay City Railroad Company and is operated by the Respondent as lessee of said Detroit & Bay City Railroad Company, which line of railroad is a part of its system of lines operated in the several states and counties mentioned in the preceding paragraph of this answer.

4. Answering the fourth paragraph of said petition, it admits that the Detroit United Railway Company is a corporation organized and existing under the laws of the state of Michigan, and says that it is informed, and avers that said Detroit United Railway Company was organized on or about December 31, 1900, under and is now existing and operating by virtue of the provisions of Chapter 168 of the Compiled Laws of the State of Michigan of 1897, being act No. 35 of the Public Acts of the Legislature of the State of Michigan of 1867, and acts amendatory thereof and supplementary thereto, and as such corporation is possessed only of such powers to transport passengers and property as are conferred by the law under which it was organized and is now existing. It has no knowledge as to the ownership of said Detroit United Railway Company of the several street railways and interurban railways mentioned in said fourth paragraph of said petition, but believes that it in some manner operates or directs the operation thereof, and admits that such lines as street railways are engaged in the transportation of persons and property and as such street railways are common carriers.

5. Answering the fifth paragraph of said petition, Respondent says that it is informed that said Detroit United Railway Company is operating or directs the operation of a street railway line or lines extending from the city of Detroit in the county of Wayne,

62 in the city of Flint in the county of Genesee, passing through the villages of Oxford and Goodrich in Oakland county, and the villages of Ortonville and Atlas in Genesee county, but has no knowledge as to the character or extent of its ownership therein. It denies that said Detroit United Railway Company is operating a line of railroad as alleged in said paragraph of said petition within the meaning of the laws of the State of Michigan, and says that it is advised that said Detroit United Railway Company is not authorized to operate a railroad or to do a railroad business under the law under which it is organized and existing.

6. This Respondent admits that there is no railroad extending to or in operation through the villages of Ortonville, Goodrich and Atlas and other points along the line of street railways alleged to be operated by said Detroit United Railway Company between the city of Flint and the village of Oxford, but it has no knowledge or information as to what, if any, facilities are afforded by the said Detroit United Railway Company for the transportation of freight between said points, and, further answering, says that it has no knowledge

or information as to the manner in which people residing at said points mentioned in said paragraph ship freight to or from said points, but says that it maintains at points on the said line of railroad leased and operated by it, in the territory where said villages are located, to-wit, at Oxford, Orion and Metamora and other places, passenger and freight depots and other reasonable facilities for the receipt and delivery of passenger and freight traffic passing or routed over its line.

7. It admits that the quotations from and references to Act 312 of the Public Acts of 1907 and Act 300 of the Public Acts of 1909 of the Legislature of the State of Michigan, are correctly set forth.

8. It admits the matter set forth in the eighth paragraph of said petition, and, further answering, Respondent says it duly filed with said Michigan Railroad Commission its answer to said com-
63 plaint of Sweers & Wilder, et al., in which it among other things, denied that it would be practicable to construct and maintain a physical connection between the railroad of this Respondent and the street railway of said Detroit United Railway in the Village of Oxford for the purposes set forth in said petition of said Sweers & Wilder, et al., and also expressly denied that said Commission had any power or authority to order or require the connection of the tracks of this Respondent and the said Detroit United Railway at Oxford for the purposes mentioned in said complaint and as set forth in the eighth paragraph of the petition of said Relator herein.

9. It admits the matters set forth in the ninth paragraph of said petition, and, further answering, says that said D. M. Sriver, et al., complainants therein, reside at the village of Goodrich in the county of Genesee, and further answering Respondent says that it duly filed with said Michigan Railroad Commission its answer to said complaint, in which it, among other things, denied that it would be practicable to construct and maintain a physical connection between the railroad of this Respondent and the street railway of the Detroit United Railway at the village of Oxford for the purposes of said petition, and denied that said Michigan Railroad Commission had any power or authority to order or require the interchange of cars, carload shipments, less than carload shipments and passenger traffic as prayed for in said complaint.

10. It admits the matters set forth in the tenth paragraph of said petition.

11. It admits the matters set forth in the eleventh paragraph of said petition, and further answering says that it is informed and therefore avers that said Grand Trunk Western Railway Company referred to in said opinion, afterward filed its bill in the Circuit Court for the county of Wayne, in Chancery, against said Michigan Railroad Commission to restrain the inforcement of its orders as to said Grand Trunk Western Railway and that said action is now pending and undisposed of.

64 12. It admits the matters set forth in the twelfth paragraph of said petition.

13. It admits the matters set forth in the thirteenth paragraph of said petition.

14. It admits the matters set forth in the fourteenth paragraph of said petition, and, further answering, Respondent says before making said physical connection with the tracks of said Detroit United Railway Company at Oxford, it fully advised said Michigan Railroad Commission, it did so protesting, and not admitting the validity or reasonableness of the said orders relating thereto, and particularly as to so much thereof as purported to require the interchange of cars, carload and less than carload shipments and passenger traffic at said point, as commanded and required by the terms of said order.

15. This Respondent answering the fifteenth paragraph of said petition says that it has been informed by said Commission that said Detroit United Railway Company is willing to accept cars and carloads of freight from this Respondent, for delivery along the line of the street railway of said Detroit United Railway Company, between the village of Oxford and the city of Flint, but it has no knowledge of the precise character of the representation to said Relator, by said Detroit United Railway Company, in that behalf, or of the contents or extent or precise character of said notice, and further answering, Respondent avers that said Detroit United Railway Company is not authorized by the law under which it was organized and is now existing to do a railroad business within the meaning of the statutes of the State of Michigan, or to receive for transportation over its said line of street railway freight traffic or freight cars of the character transported or carried over the railroad lines of Respondent; and further answering says that it is informed and believes and so charges the truth to be that said Detroit United Railway Company has not been authorized by and it is not within the power of
65 the several municipalities through which its said line passes to authorize or permit said Detroit United Railway Company to transport freight traffic or freight cars such as are transported, operated and carried over the lines of the Respondent's railroad, and further says that it is informed and believes and so charges the truth to be that said Detroit United Railway Company is not able in fact to transport and carry such freight and freight cars, in that the grades, curves, rails, bridges and roadbed are not sufficient on which to maintain, operate and move said traffic and cars and that said Detroit United Railway Company is wholly without equipment of engines or other motive power and other appliances and facilities sufficient therefor; and, further answering, says that said Detroit United Railway Company is wholly without equipment of freight cars or other forms of rolling stock by means of which it could undertake to interchange cars of freight traffic with this Respondent were it authorized, in any manner, by law so to do, and avers that said Detroit United Railway Company is not competent in law or in fact, or is authorized in any manner or to any extent to use its said line of street railway or any portion thereof between or in the village of Oxford and the city of Flint, as belt lines and terminal railroads are used in this state, and is not authorized or empowered by the laws of this state or otherwise to enter into any contract,

agreement or arrangement whatever with this Respondent in relation thereto or any of the business matters or affairs purporting to be authorized, commanded or directed by said order of the said Michigan Railroad Commission.

This Respondent admits that it has hitherto refused and still continues to refuse to deliver cars and carloads or less than carload shipments of freight in cars to said Detroit United Railway Company at said village of Oxford as alleged in the fifteenth paragraph of said petition.

16. It admits the allegations contained in the sixteenth paragraph of said petition, and in this behalf, further answering, says
66 that the handling of passengers or freight traffic, or shipments for delivery over belt or terminal lines of railroad are matters of private contract, agreement or arrangement between such Belt and Terminal Railroads and the railroads, corporations or persons using the facilities afforded by said terminal or belt railroads, and that the use of such facilities is obtained only on such terms and conditions as may be agreed upon between the parties thereto. And further answering says that said Detroit United Railway Company is not in fact or in law a belt line or terminal railroad corporation nor authorized by law to act as such; nor are the line or lines of railway operated by it extending from the village of Oxford to the city of Flint and within the boundaries of said municipalities, belt or terminal railroads; nor can they in fact or in law be used as belt or terminal railroads may be or are now used; nor has said Relator any power or authority to require this Respondent to give the use of its tracks or terminal facilities for the purposes mentioned in said orders or otherwise.

17. This Respondent admits that said Relator caused an examination of Mr. S. W. Brown, the General Superintendent of Respondent, at its office on the 2nd day of March, A. D. 1910, for the purposes alleged in said paragraph of said petition and that Exhibit "F" attached to said petition is substantially a correct statement of such examination, and, further answering, says that said hearing was upon an order of said Relator, a copy of which is hereto annexed marked Exhibit "I" and made a part of this answer.

18. This Respondent says that the matters set forth in the eighteen- paragraph of said petition are allegations or conclusions of law, and that it is not necessary for this Respondent to answer the same, but in this behalf Respondent denies that the conclusions therein set forth are in law well founded or represent the true construction of said sections of said statutes.

67 19. This Respondent says it is informed and believes that the matters set forth in the nineteenth paragraph of said petition are substantially correct, but it has no precise information relating thereto.

20. This Respondent admits that *the* section 49 of the Act No. 300 of the Public Acts of 1909 purports to authorize the Relator to proceed upon orders made by the body known as the Michigan Railroad Commission under Act 312 of the Public Acts of 1907.

21. This Respondent admits the allegations of the twenty-first

paragraph of said petition, so far as it relates to this Respondent, and says that it has no knowledge or information concerning the allegations therein, so far as they relate to the Detroit United Railway Company.

22. This Respondent says that the matters therein contained are conclusions of law and it is not necessary for it to make answer thereto.

Further answering and showing cause this Respondent says:

23. That said Order of said Michigan Railroad Commission, under date of June 5th, 1908, referred to in the twelfth paragraph of said petition, so far as the same purports to require, direct or command this Respondent to interchange cars, carloads and less than carload shipments and passenger traffic under the provisions of subdivision (*b*) of section 7 of Act 312 of the Public Acts of 1907, or as re-enacted in subdivision *b* of Section 7 of Act 300 of the Public Acts of 1909, and the several orders supplementary thereto, so far as they require, direct or command, or in any manner relate to the matters and things last above herein specified, and as well said subdivision *b* of said Section 7, of Act 312 of the Public Acts of 1907, and as re-enacted in subdivision (*b*) of Section 7 of Act 300 of the Public Acts of 1909, so far as the same purports to require this respondent to interchange cars, carload shipments, less than carload ship-
68 ments and passenger traffic with said Detroit United Railway Company, are void and said portion of the said statutes are unconstitutional and void and have no force or effect whatsoever:

(*a*) Because to enforce said orders of said Michigan Railroad Commission would deprive this Respondent of its property without due process of law, and would violate section 16 of Article II of the Constitution of the State of Michigan, and Section 32 of Article VI of the Constitution of the State of Michigan of 1850, and the fourteenth amendment to the Constitution of the United States.

(*b*) Because to enforce said subdivisions of said statutes of the State of Michigan would deprive this Respondent of its property without due process of law and would violate the said sections of the respective Constitution- of the State of Michigan and of the United States last above mentioned.

(*c*) Because said Michigan Railroad Commission is without power or authority to require, command or direct this Respondent to enter into any contract, agreement or other arrangement for the interchange of cars and carload or less than carload shipments or passenger traffic with said Detroit United Railway Company, or to fix or determine the terms or conditions of any such contract and said order, so far as it purports so to do violates said sections and parts of the Constitutions of the State and United States hereinbefore set forth.

(*d*) Because said section of the statutes of the State of Michigan, so far as the same purport or attempt to require, command or direct this Respondent to enter into any contract, agreement or arrangement with said Detroit United Railway Company for the purposes aforesaid or any of them, violate said sections of the constitution of the State of Michigan and of the United States hereinbefore recited.

(*e*) Because said Michigan Railroad Commission is without power

or authority to require the interchange of cars, carload ship-
69 ments, less than carload shipments and passenger traffic, and for that purpose to require the physical connection of tracks between railroads and street railways.

(*f*) Because said Michigan Railroad Commission is without power or authority to give or grant, in any manner or to any extent, to said Detroit United Railway Company, the use of the tracks or terminal facilities of this Respondent.

(*g*) Because said orders and the statutes of the State of Michigan referred to therein, requiring as they do the delivery by this Respondent, of cars containing carload and less than carload shipments and passenger traffic beyond the right of way of this Respondent is a direct burden upon and regulation of interstate commerce in which it, Respondent, is employed as aforesaid and void and violate the third clause of section 8 of Article 1 of the Constitution of the United States vesting in the Congress of the United States the power to regulate Commerce with foreign nations and among the several states.

24. Further answering and showing cause, this Respondent says that in carrying on and conducting its business as a common carrier, and more particularly the Interstate Commerce business as set forth in the second paragraph of this answer, it uses, transports and carries cars of other railroad companies containing traffic and shipments of freight in carload and less than carload lots, and that said cars are transported, carried and used by this company under mutual contracts, agreements and arrangements between this Respondent and the several railroad companies owning or using cars containing such shipments, whereby it assumes the responsibility for the reasonable return of said cars to the railroad owning the same; to account to and pay said several railroad companies an agreed compensation for the use of said cars, to keep the same while in its use and possession in good repair and generally comply with the laws of this state and the United States in the maintenance of safety appliances on, and other like regulations concerning the operation and
70 maintenance of, said cars; and that under such contracts, agreements, and arrangements, Respondent has no power, authority or permission to allow, grant or give, in any manner or to any extent, the possession or use of said foreign cars or cars of other railroad corporations to said Detroit United Railway Company.

25. Respondent therefore prays that the Petition of said Relator and the proceedings founded thereon be dismissed and held for naught.

MICHIGAN CENTRAL RAILROAD COMPANY,
By R. H. L'HOMMEDIEU,
General Manager.

FRANK E. ROBSON,
Attorney for Respondent.
HENRY RUSSEL,
Of Counsel.

Business Address: Legal Department, M. C. R. R. Depot Building, Detroit, Michigan.

STATE OF MICHIGAN,
County of Wayne, ss:

R. H. L'Hommedieu, being duly sworn, says that he has read the foregoing Answer by him subscribed as General Manager of, and for and on behalf of the Michigan Central Railroad Company, said Respondent, and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated to be on information and belief, and as to all such matters he verily believes it to be true.

R. H. L'HOMMEDIEU.

Subscribed and sworn to before me this 19th day of July, A. D. 1910.

JOHN A. BOYNE,
Notary Public, Wayne County, Michigan.

My Commission expires August 19th, 1910.

71 "EXHIBIT I."

STATE OF MICHIGAN:

Before the Michigan Railroad Commission.

Session of the Michigan Railroad Commission Held at its Office in the City of Lansing, on the 10th Day of February, A. D. 1910.

Present: Hon. Cassius L. Glasgow, Chairman: Hon. George W. Dickinson, Hon. James Scully, Commissioners.

Among the proceedings then and there had were the following, to-wit:

No. D-69.

SWEERS & WILDERS, GUY N. HART, H. A. PROFROCK, Complainants.
vs.
DETROIT UNITED RAILWAY, MICHIGAN CENTRAL RAILROAD CO., Defendants.

Complaint having been filed by the above named complainants against the above named defendants on January 14, 1908, and after issue joined a hearing was had thereon on April 28th, 1908, and the matter at issue having been duly considered an opinion was filed and order made on January 5th, 1908, said order requiring the Michigan Central Railroad Company and the said Detroit United Railway Company, on or before the 15th day of August, 1908, to connect their tracks at such point in the village of Oxford, Oakland county, as they shall between themselves agree upon as most desirable and thereafter there interchange cars, carload shipments, less than carload shipments and passenger traffic, in accordance with the provisions of Sec. 7 of Act 312 of the Public Acts of 1907.

72 It is therefore ordered, that said parties to this complaint be and are hereby required to appear at the offices of this Commission in the Oakland Building, in the city of Lansing, Michigan, on Wednesday, the 2nd day of March, 1910, at 9:00 o'clock a. m., for a hearing to determine the kind and quantity of business, cars, carload shipments, less than carload shipments and passenger traffic to be interchanged between said defendant railroads at said point in accordance with the said order of June 5th, 1908.

CASSIUS L. GLASGOW,
Chairman.
GEORGE W. DICKINSON,
JAMES SCULLY,
Commissioners.

73 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the seventeenth day of June in the year of our Lord one thousand nine hundred and ten.

Present the Honorable
Russell C. Ostrander,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Associate Justices.

Order to Show Cause.

No. 24103.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

On reading and filing the petition of the relator, above named, and on motion of Franz C. Kuhn, Attorney General, attorney for relator; Ordered that said respondent, Michigan Central Railroad Company, do show cause to this Court on the 15th day of July, 1910, why a peremptory mandamus should not be issued out of and under the seal of this Court, to compel it, the said Michigan Central Railroad Company, to comply with the order of the said Michigan Railroad Commission, made upon the fifth day of June A. D. 1908, and to deliver to the Detroit United Railway Company, at the Village of Oxford, in the County of Oakland, freight cars and freight in carload lots to be delivered by said company to shippers and consignees along the line of the said Detroit United Railway Company at the said Village of Oxford and between the Village of Oxford and the City of Flint, in the same manner and under the same general conditions except as to motive power as belt line railroads and terminal railroads are now used for like purposes; and to receive from the said Detroit United Railway Company at the Village of Oxford

freight cars and freight in carload lots delivered to it under like conditions; as ordered by said commission and required by subdivision (*b*) of Section 7 of Act 312, Public Acts of 1907, and subdivision (*b*) of Section 7 of Act 300, Public Acts of 1909. And it is further ordered that a certified copy of this order, together with a copy of the petition and affidavits aforesaid, and upon which this order is founded, be served on the said respondent twenty days before the time herein limited for showing cause.

74 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of April in the year of our Lord one thousand nine hundred and eleven.

Present the Honorable
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 24103.

MICHIGAN RAILROAD COMMISSION
vs.
MICHIGAN CENTRAL RAILROAD COMPANY.

This matter coming on to be heard is submitted on briefs.

75 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the third day of November in the year of our Lord one thousand nine hundred and eleven.

Present the Honorable
Russell C. Ostrander, Chief Justice.
John E. Bird,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 24103.

MICHIGAN RAILROAD COMMISSION
vs.
MICHIGAN CENTRAL RAILROAD COMPANY.

In this cause an opinion is filed in accordance with which an order will be hereafter entered.

76 24103.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

Before Ostrander, Steere, Moore, McAlvay, Brooke, Blair and Stone, Justices.

Opinion.

BLAIR, *J.:*

Relator asks for a writ of mandamus to compel respondent to comply with its order:

"for the reasons set forth more fully in the opinion of the commission this day filed, that the said Michigan Central Railroad Company and the said Detroit United Railway Company, on or before the 15th day of August, A. D. 1908, connect their tracks at such point in the said village of Oxford, Oakland County, as they shall between themselves agree upon as most desirable, and thereafter there interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of section seven of Act 312 of the Public Acts of 1907.

It is further ordered that the said defendants shall on or before the 1st day of July, A. D. 1908, designate the point at which such physical connection shall be made and notify the said commission of such designation and that if the said defendants are unable to agree as to the said point, then the said commission shall on or before the said first day of July make a supplemental order herein, determining the location of said connection."

The Michigan Central Railroad Company operates the Detroit & Bay City Railroad as lessee. The line of the Detroit & Bay City Railroad extends from the city of Detroit, in the county of Wayne, to the city of Bay City, in the county of Bay, passing through the village of Oxford, in the county of Oakland. The Detroit United Railway Company, a corporation organized and existing under the street railway act, chapter 168, Compiled Laws, 1897, operates an interurban railway extending from the city of Detroit to the city of Flint and likewise passing through the village of Oxford, in the county of Oakland. Between the village of Oxford and the city of Flint, the railroad of the Detroit United Railway passes through the village of Ortonville, in the county of Oakland, and the villages of Goodrich and Atlas, in the county of Genesee. Ortonville is ten miles from Oxford. Goodrich is sixteen miles from Oxford, and Atlas is eighteen miles from Oxford. The only railroad facilities at Ortonville, Goodrich and Atlas are such as are afforded by the Detroit United Railway.

The Detroit United Railway is operated entirely by electric motive power. Shipments of freight to or from points on the Detroit United Railway between Oxford and Flint are required to be transferred from the steam railroad cars of the Michigan Central to

the cars of the Detroit United Railway and transported by the Detroit United Railway to their destination.

In January, 1908, certain residents of Ortonville and also of Goodrich filed with the Michigan Railroad Commission a complaint against the Michigan Central Railroad Company and the Detroit United Railway Company, asking in substance that an order be made by the commission requiring the Michigan Central Railroad Company and the Detroit United Railway Company to make a physical connection of their railroad tracks in the village of Oxford and to there interchange cars, carload shipments, etc., in accordance with the provisions of subdivision B of section 7, act 312 of the Public Acts of 1907. April 28, 1908, a hearing was had before the commission, after due notice to the railroad companies, at which the railroad companies appeared and were represented by counsel and a full hearing had bearing upon the matters complained of in said petitions. On June 5, 1908, the commission filed an opinion in said cause and, upon the same day, made the order above referred to. The companies not having designated the point at which the physical connection of their tracks was
77 to be made, the commission, on the 27th of November, 1908, made a supplemental order designating the point at which such physical connection should be made and extending the time for the installation of the same to December 11, 1908.

The physical connection between the tracks of said railroad companies was thereafter installed as ordered by said commission and is still maintained by said railroad companies, although respondent performed its part under protest.

The orders made by the Michigan Railroad Commission were duly served upon the Michigan Central Railroad Company and the Detroit United Railway Company, as required by law, and neither of said companies instituted any proceeding to test the validity of said orders within the time limited therefor by section 25 of act 312 of the Public Acts of 1907. The Detroit United Railway Company is willing and able to accept cars and carloads of freight from the Michigan Central Railroad Company to be delivered along the line of the Detroit United Railway between the village of Oxford and the city of Flint. The Michigan Central Railroad Company, however, has hitherto refused, and still refuses, to deliver cars and carloads of freight to the Detroit United Railway Company for transportation to the points on the Detroit United Railway between Oxford and Flint.

The original act creating the Michigan Railroad Commission is act 312 of the Public Acts of 1907, entitled:

"An act to regulate railroads and the transportation of persons and property in this State, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan Railroad commission, define the powers and duties thereof, and to prescribe penalties for violations hereof."

Subdivision D of section 3 of said act provides that "the term 'railroad' as used in this act shall be construed to include both steam and electric railroads," etc. Subdivision B of section 7 of

said act, under which the orders in this case were made, provides as follows:

"Where it is practicable and the same may be accomplished without endangering the equipment, tracks, or appliances of either party, the commission may, upon application require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes."

Subdivision C of the same section provides:

"Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded. Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations, and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised. Any railroal corporation refusing to comply with the provisions of this section shall be liable to a penalty not exceeding five hundred dollars."

Sections 25 and 26 read as follows:

"SEC. 25. All rates, fares, charges, classifications and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section twenty-six of this act, or until changed or modified by the commission as provided for in paragraph (*b*), section twenty-four of this act.

SEC. 26. (*a*) Any railroad or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within sixty days commence an action in the circuit court in chancery against the commission as defendant to vacate and set aside any such order on

the ground that the rate or rates, fares, charges, classifications, joint rate or rates fixed is unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpœna. The commission shall file its answer, and on leave of court any interested party may file an answer to said complaint whereupon said action shall be at issue and stand ready for hearing upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the circuit courts in chancery are hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in
78 whole or in part, and to make such other order or decree as the courts shall decide to be in accordance with the facts and the law."

Respondent claims a mandamus should not issue because:

"1. The Detroit United Railway Company is a 'street railway' and not authorized by the act under which it is organized to do a 'railroad' business and transport over its lines freight and freight cars of the character transported by respondent, and it cannot be authorized so to do by the municipalities through which its lines pass, nor by the action of relator.

2. And, therefore, it is not competent to enter into any contract, agreement or arrangement for that purpose with respondent.

3. Nor is it, in fact, possessed of cars, equipment, tracks or other facilities sufficient to handle such freight and freight cars, or with which to make the interchange of business required by the order of relator.

4. Respondent cannot without breach of contract interchange with the Detroit United Railway company cars in its possession belonging to foreign or other corporations.

5. The order of said commission and the statutes purporting to authorize it violates Section 16, Article II, of the Constitution of the State of Michigan (and as well Section 32 of Article VII of the Constitution of 1850), and the Fourteenth Amendment to the Constitution of the United States in that the enforcement of said order and statutes would deprive respondent of its property without due process of law.

6. Said order and said statutes are an attempt to regulate and impose a burden upon interstate commerce and violate Section 8 of Article I of the Federal Constitution vesting in Congress the power to regulate interstate commerce."

The opinion of the commission, after determining the practicability of the physical connection and of interchange, and reciting the testimony and other facts, proceeds as follows:

"Reasonableness of Requiring Interchange.

The evidence in this case amply sustains the allegations of com-

plainants in these cases that interchange between the electric and steam lines at the points in question would result in very substantial benefits to these villages and the surrounding communities. It is shown that fifty cents less per ton is paid for hay at Ortonville than at the neighboring town of Grand Blanc, Fifty cents more is charged per ton for coal at Ortonville than at Oxford, and these differences in prices are due to the expense incurred in the transfer at Oxford of said commodities from the cars of the steam line to those of the electric. Stock for shipment must be driven to Thomas, Davison and other points. Elevator facilities have not been provided at Goodrich or Ortonville because of lack of shipping facilities.

As to defendant Michigan Central Railroad company, small sacrifice is asked in order to secure to these people the benefits they ask. It will have to expend its proportion of the amount necessary to install the connection, but no further expenditure is involved for it. Were the contemplated elevator at Goodrich one to be established at Oxford on the line of the Michigan Central, or at Flint on the 'cut off' of the Grand Trunk, side track facilities would be provided for it by that company, in view of the business to be derived. The business to be derived by the steam railroad company from Ortonville, Goodrich and surrounding country, via these connections and the Detroit United Railway gives promise of being considerable in amount. Thereby it is believed the Michigan Central Railroad company and the Grand Trunk Western Railway company will be the beneficiaries by such connections."

It is apparent that the statute expressly authorized the order made, and, the respondent having failed to institute proceedings for a review of the order, the questions of the practicability of the physical connection and of the interchange of traffic, as well as the reasonableness of the service required are not open in this proceeding. We, therefore, consider only the constitutional question presented.

Does the order violate the commerce clause of the constitution? As we have heretofore held, the jurisdiction of the commission is limited to intrastate traffic and its order in the present case must be deemed to be so limited.

A. A. R. R. Co. v. Mich. R. R. Com., 163 Mich., 49.
See, also, Wisconsin & R. R. Co. v. Jacobson, 179 U. S., 287.
Pittsburg & Ry. Co. v. Hunt (Ind.), 86 N. E., 328.

Does the order deprive respondent of its property without due process of law? For the affirmance of the proposition that it does respondent relies upon Federal Stock Yds. Co. vs. L. & N. Ry. Co., 192 U. S., 568, and Louisville & Nashville Co. vs. Cent. Stock Yds. Co., 212 U. S., 132.

In our opinion, the present case is distinguishable from, and not ruled by, the cases cited for the reasons that the statute expressly imposes upon respondent an obligation to interchange cars, etc., and subdivision C of section above quoted expressly provides for reasonable compensation.

We therefore hold the statute to be constitutional and the writ will issue as prayed.

Steere, Moore, McAlvay, Brooke and Stone, JJ., concurred.

OSTRANDER, *C. J.:*

I am of opinion that the act in question may be so construed that it will be constitutional. In so far as he considers the grounds upon which the validity of the law is attacked, I agree with Mr. Justice Blair. While I doubt the propriety of declaring the law to be constitutional before, and apart from, determining the meaning of some of its provisions, I am willing to assent to the granting of an order requiring respondent to conform to the order made by the commission.

Endorsed: Filed Nov. 3, 1911. Chas. C. Hopkins, Clerk Supreme Court.

79 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the Sixteenth Day of October, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present the Honorable—

Joseph B. Moore, Chief Justice.
Joseph H. Steere,
Aaron V. McAlvay,
Flavius L. Brooke,
Franz C. Kuhn,
John W. Stone,
Russell C. Ostrander,
John E. Bird,
Associate Justices.

Final Order.

No. 24103.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

This matter having been heard upon the petition of the relator, the answer of respondent, and the briefs of counsel for the respective parties; the Court having duly considered the matter, and it appearing to the Court that as to so much of the order of Relator of June 5th, A. D. 1908, in a matter then pending before said relator, wherein Sweers & Wilder, Guy N. Hart, H. A. Profrock, were complainants, and Detroit United Railway, and The Michigan Central Railroad Company were defendants, wherein the said defendants were required to connect their tracks at the Village of Oxford, Oakland County, has been complied with by said defendants; and

it further appearing that the said respondent herein not having shown sufficient cause why the remaining and other portions of said order should not be complied with by it,

It is ordered that a peremptory writ of mandamus issue out of and under the seal of this Court, directing the said respondent to forthwith, at the point of said physical connection between its
80 tracks and the tracks of the said Detroit United Railway in the Village of Oxford, Oakland County, Michigan, so far as same relates to intrastate traffic, interchange cars, carload shipments, less than carload shipments and passenger traffic, in accordance with the provisions of Subdivision "B" of Section 7 of Act 312 of the Public Acts of the State of Michigan of 1907, and as re-enacted and contained in Subdivision "B" of Section 7 of Act 300 of the Public Acts of the State of Michigan, of 1909, and in accordance with the order of the relator of June 5th, A. D. 1908.

81 STATE OF MICHIGAN:

The Supreme Court of the State of Michigan.

No. 24103.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

Now comes The Michigan Central Railroad Company, the above named respondent, and by its petition herein, resp-fully shows:

(1) That on or about the 17th day of June, A. D. 1910, the Michigan Railroad Commission, a body corporate under Act 300 of the Public Acts of the State of Michigan of 1909, being the successor to the Michigan Railroad Commission theretofore existing under Act 312 of the public Acts of the State of Michigan of 1907, filed its petition in the Supreme Court of the State of Michigan, praying that an order be issued from the said Supreme Court of the State of Michigan, directed to said The Michigan Central Railroad Company, your petitioner, said respondent, requiring it to show cause why a peremptory writ of mandamus should not issue, requiring it to comply with the order of the said Michigan Railroad Commission made on or about the 5th day of June, A. D. 1908, to deliver to the Detroit United Railway Company, a street railway, under the laws of Michigan, at the Village of Oxford, in the County of Oakland, in the said State of Michigan, freight cars and freight in carload lots, to be delivered by said Detroit United Railway Company to shippers and consignees along the line of the Detroit United Railway Company at the Village of
82 Oxford and between the Village of Oxford and the City of Flint, in the same manner and under the same general conditions, except as to motive power, as belt line roads and terminal roads are used for a like purpose, and to receive from the said Detroit United Railway Company at the Village of Oxford freight

cars and freight in carload lots delivered to said Detroit United Railway Company, under like conditions and generally to comply with Sub-division (*b*) of Section 7 of Act 312 of the Public Acts of the State of Michigan of 1907, as re-enacted in Subdivision (*b*) of Section 7 of Act 300 of the Public Acts of the State of Michigan of 1909.

(2) That sub-division (*b*) of Section 7 of Acts 312 of the Public Acts of the State of Michigan of 1907, as re-enacted and contained in sub-division (*b*) of Section 7 of Act 300 of the Public Acts of the State of Michigan of 1909, reads as follows:

"(*b*) Where it is practicable and the same may be accomplished without endangering the equipment, tracks, or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban and interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes."

(3) Thereafter, and on or about the 17th day of June, A. D. 1910, an order to show cause in accordance with the prayer of said petition was issued by the said Supreme Court of the State of Michigan, and complying with said order to show cause, your petitioner, respondent in said proceeding in said Supreme Court of the State of Michigan, made and filed its answer therein on or about the 20th day of July A. D. 1910, and in and by said answer, among other things, alleged:

83 (*a*) That said order of said Michigan Railroad Commission, made under date of June 5th, 1908, so far as the same purports to require, direct or command this petitioner, said respondent, to interchange cars, carloads and less than carload shipments and passenger traffic, under the provisions of said Acts of the Legislature of the State of Michigan, and said Acts of the Legislature of the State of Michigan, so far as they purport to require your petitioner, said respondent, to interchange cars, carload shipments and less than carload shipments and passenger traffic with said Detroit United Railway Company, were void, unconstitutional and of no force or effect whatsoever;

(*b*) Because to enforce said order of said Michigan Railroad Commission would deprive this petitioner, said respondent, of its property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, relating thereto.

(*c*) Because to enforce said statutes of the State of Michigan would deprive this petitioner, said respondent, of its property with-

out due process of law, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, relating thereto.

(*d*) Because said Michigan Railroad Commission was without power or authority to require, command or direct your petitioner, said respondent, to enter into any contract, agreement or other arrangement for the interchange of cars, carload and less than carload shipments and passenger traffic, from the said Detroit United Railway Company, or fix or determine the terms or conditions of any such contract, and said order, as well as said sections of the statutes of the State of Michigan, so far as the same purport or attempt to require, command or direct this petitioner, said
84 respondent, to enter into any such contract, agreement or arrangement, deprived this petitioner, said respondent, of its property without due process of law, and violated the provisions of the 14th amendment to the Constitution of the United States relating thereto.

(*e*) Because said orders of said Michigan Railroad Commission and the said sections of the statutes of the State of Michigan, hereinbefore referred to, so far as they purport to require, or command this petitioner, said respondent, to deliver cars containing carload and less than carload shipments and passenger traffic beyond the right of way of this petitioner, said respondent, is a direct burden upon and regulation of Interstate Commerce, in which this petitioner, said respondent, is employed, as fully set forth in the answer of said respondent, and said orders and said statutes are void and violate the third clause of Section 8 of Article I of the Constitution of the United States, vesting in Congress the power to regulate commerce with foreign nations and among the several states.

(4) That thereafter and on or about the 3rd day of November, A. D. 1911, the said Supreme Court of the State of Michigan filed an opinion in said action, wherein it was ruled:

(*a*) That the provisions of said subdivision *b* of Sec. 7 of Act 312 of the Public Acts of the State of Michigan of 1907, (re-enacted as subdivision *b* of Sec. 7 of Act 300 of the Public Acts of the State of Michigan of 1909) and the said order of said Relator made thereunder, bearing date June 5, 1908, and the enforcement thereof, would not deprive your petitioner, said respondent, of its property without due process of law, and did not violate the provisions of the Fourteenth Amendment to the Federal Constitution.

(*b*) That the provisions of said act of the Legislature of the State of Michigan above referred to and set forth herein, and the order of the said Michigan Railroad Commission of June 5, 1908,
85 did not impose a burden upon and was not a regulation of interstate commerce and did not violate the third clause of Sec. 8 of Article I of the Constitution of the United States, which vested in the Congress of the United States the power to regulate commerce with foreign nations and among the several states.

(*c*) That the provisions of subdivision (*c*) of Section 7 of Act 312 of the Public Acts of the State of Michigan of 1907, as re-

enacted in subdivision (*s*) of Act 300 of the Public Acts of the State of Michigan of 1909, which reads as follows:

"(*c*) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised,"

provided a means of affording reasonable compensation to this petitioner, said respondent, for the obligation alleged to be imposed upon it by the provisions of subdivision (*b*) of said Section 7 of said Acts of the Legislature of the State of Michigan, and the said statutes of the State of Michigan and the order of said Relator of June 5, 1908, and the enforcement thereof, did not and would not deprive this petitioner, said respondent, of its property without due process of law, and were not in violation of the provisions of the 14th Amendment to the Constitution of the United States, relating thereto.

(5) That thereafter, and on the 16th day of October, A. D. 1912, final judgment was rendered against your petitioner, said respondent, by the Supreme Court of the State of Michigan,
86 that being the highest Court of law or equity in the State of Michigan, awarding a peremptory Writ of Mandamus in accordance with the opinion of said Court, and the prayer of said Michigan Railroad Commission.

(6) Your petitioner therefore says that manifest error has happened therein, as more fully set forth in its assignment of errors herein, to the great damage to your petitioner, and prays:

(A) For the allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Michigan and the judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the errors complained of by your petitioner may be corrected and examined, and

(B) That said judgment of said Supreme Court of the State of Michigan may be reversed, set aside and held for naught and your petitioner discharged.

(C) And your petitioner will ever pray.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
By FRANK E. ROBSON, *Its Attorney.*
HENRY RUSSEL, *Of Counsel.*

Business Address: Room 23, Michigan Central Depot Building, Detroit, Michigan.

The Writ of Error as prayed for in the foregoing petition is hereby allowed this 25 day of November A. D. 1912, the Writ of Error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of Five Thousand Dollars ($5,000.)

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Dated this 25 day of November A. D. 1912.

86½ [Endorsed:] No. 24103. State of Michigan. The Supreme Court of the State of Michigan. Michigan Railroad Commission, Relator, vs. The Michigan Central Railroad Company, Respondent. Petition for Writ of Error. Frank E. Robson, Attorney for Respondent. Henry Russel, Of Counsel. Business Address: Room 23, M. C. Station, Detroit, Michigan.

87 UNITED STATES OF AMERICA, *ss:*

To the Michigan Railroad Commission, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the State of Michigan, wherein The Michigan Central Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this 25th day of November A. D. 1912.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of United States.

Service accepted, Dec 3, 1912.

ROGER I. WYKES,
Attorney General of Mich.

Service accepted Dec. 3, 1912.

MICHIGAN RAILROAD COMMISSION,
P-r C. L. GLASGOW, *Ch'm'n.*

87½ [Endorsed:] State of Michigan. The Supreme Court of the State of Michigan. Michigan Railroad Commission, Relator, vs. The Michigan Central Railroad Company, Respondent. Citation of Writ of Error. Frank E. Robson, Attorney for Respondent. Henry Russel, Of Counsel. Business Address: Room 23, M. C. R. R. Co., Detroit, Michigan.

88 STATE OF MICHIGAN:

The Supreme Court of the State of Michigan.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

Bond.

Know all men by these presents, That we, The Michigan Central Railroad Company, a Michigan corporation, as principal, and National Surety Company, of New York, N. Y. as surety are held and firmly bound unto the Michigan Railroad Commission in the sum of Five Thousand Dollars ($5,000), to be paid to the said Michigan Railroad Commission for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors jointly and firmly by these presents.

Sealed with our seals and dated this 25th day of November, A. D. 1912.

Whereas, the above named The Michigan Central Railroad Company has prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Michigan, Now Therefore the condition of this obligation is such that if the above named The Michigan Central Railroad Company shall prosecute said Writ of Error and answer all costs and damages if it shall fail to make good its appeal, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
By E. D. BRONNER, *General Manager.*
NATIONAL SURETY COMPANY,
By W. H. ROUNSAVILLE,
Attorney in Fact.

[Seal National Surety Company.]

Signed, Sealed and delivered in presence of—
W. R. MERRIAM.
M. C. McCORMICK.

Approved this November 25, 1912.
WILLIAM R. DAY,
A. J. U. S. Sup. C't.

Indorsed: Filed November 30th, 1912. Chas. C. Hopkins, Clerk Supreme Court of Michigan.

89 STATE OF MICHIGAN:

The Supreme Court of the State of Michigan.

MICHIGAN RAILROAD COMMISSION, Relator,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, Respondent.

Now comes The Michigan Central Railroad Company and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Michigan in the above entitled matter, there is manifest error in this, to-wit:

1. The said Court erred in refusing to dismiss the petition of the said the Michigan Railroad Commission for a Writ of Mandamus, for the reason that the order of the Michigan Railroad Commission, under date of June 5, 1908, under the provisions of subdivision B of Section 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision B of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), which statute reads as follows:

"(*b*) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be
90 used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;"

was invalid and if enforced would deprive The Michigan Central Railroad Company of its property without due process of law, and violated the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

2. The said Court erred in refusing to dismiss said petition of said Michigan Railroad Commission for a Writ of Mandamus, for the reason that said subdivision *b* of said Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision B of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), is unconstitutional and void because it deprives The Michigan Central Railroad Company of its property without due process of law, and violates the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

3. That said Court erred in ruling that said order of the Michigan Railroad Commission, of June 5th, 1908, made under the pro-

visions of subdivision *b* of Sec. 7 of Act 312 of the Public Acts of 1907 (re-enacted as subdivision *b* of Sec. 7 of Act 300 of the Public Acts of the State of Michigan of 1909), did not deprive The Michigan Central Railroad Company of its property without due process of law and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

4. The said Court erred in ruling that said subdivision *b* of Sec. 7 of Act 312 of the Public Acts of the State of Michigan of 1907 (re-enacted in subdivision *b* of Sec. 7 of Act 300 of the Public
91 Acts of the State of Michigan of 1909) did not deprive the Michigan Central Railroad Company of its property without due process of law and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

5. The said Court erred in refusing to dismiss said petition of said Michigan Railroad Commission for a Writ of Mandamus for the reason that the provisions of subdivision *b* of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision *b* of Sec. 7 of the Public Acts of Michigan of 1909), do not authorize said Michigan Railroad Commission by its order of June 5, 1908, to require, command or direct The Michigan Central Railroad Company to enter into any contract, agreement or other arrangement for the interchange of cars or carload, or less than carload shipments, or passenger traffic with said Detroit United Railway, and such order if enforced in that behalf would deprive said The Michigan Central Railroad Company of its property without due process of law, and would violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

6. The said Court erred in ruling and deciding that the provisions of subdivision *b* of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision *b* of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), authorized and empowered the Michigan Railroad Commission by its order of June 5, 1908, to require, command or direct The Michigan Central Railroad Company to enter into a contract, agreement or other arrangement for the interchange of cars and carload, or less than carload shipments, or passenger traffic, with said Detroit United Railway, and did not deprive
The Michigan Central Railroad Company of its property,
92 and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

7. The Court erred in ruling that subdivision *b* of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision *b* of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909) conferred upon the Michigan Railroad Commission power to require, demand and compel The Michigan Central Railroad Company to surrender and give to the Dertoit United Railway the use of its cars and the cars of foreign companies in its possession, and did not thereby deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provis-

ions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

8. The Court erred in ruling that subdivision C of section 7, of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision C of section 7 of Act 300 of the Public Acts of Michigan of 1909), and which statute reads as follows:

"(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

authorized The Michigan Railroad Commission to fix the compensation for the use of the cars and the cars of foreign companies in the possession of The Michigan Central Railroad Company,
93 which it was required to surrender and give to the Detroit United Railway under the provisions of said order of said Commission, made June 5th, 1908, and did not deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in ruling that the provisions of subdivision *b* when applied in connection with the provisions of subdivision *c* of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivisions *b* and *c* of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909) did not deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provisions relating thereto, contained in the Fourteenth Amendment to the Constitution of the United States.

10. The said Court erred in not dismissing the petition of said Michigan Railroad Commission for a Writ of Mandamus for the reason that said order of the Michigan Railroad Commission of June 5, 1908, and the sections of the statute of the State of Michigan hereinbefore referred to, requiring the delivery by The Michigan Central Railroad Company of cars containing carload and less than carload shipments and passenger traffic beyond its right of way imposes a direct burden upon, and is regulation of interestate commerce, and violates the third clause of Sec. 8 of Article I of the Constitution of the United States, which vests in Congress the power

to regulate commerce with foreign nations and among the several states.

11. The Supreme Court of the State of Michigan erred in ruling that the said order of June 5, 1908 by said Michigan Rail-
94 road Commission and the statutes of the State of Michigan hereinbefore referred to under which said order was made, was not a burden upon or regulation of interstate commerce, and did not violate the third clause of Sec. 8 of Article I of the Constitution of the United States, which vests in Congress the power to regulate commerce with foreign nations and among the several states.

12. The Supreme Court of the State of Michigan erred in awarding a writ of mandamus in favor of the Relator and against the Respondent.

And The Michigan Central Railway Company respectfully prays that said judgment, awarding a writ of mandamus in favor of the said Relator, and against it, The Michigan Central Railroad Company, may be reversed, set aside and held for naught.

FRANK E. ROBSON,
Attorney for Respondent.
HENRY RUSSEL,
Of Counsel.

Business Address: Room 23, M. C. R. R. Depot Building, Detroit, Michigan.

94½ [Endorsed:] No. 24103. State of Michigan. The Supreme Court of the State of Michigan. Michigan Railroad Commission, Relator, vs. The Michigan Central Railroad Company, Respondent. Assignments of Error. Frank E. Robson, Attorney for Repondent. Henry Russel, Of Counsel. Business Address: Room 23, M. C. Station, Detroit, Michigan. Filed Nov. 20, 1912. Chas. C. Hopkins, Clerk Supreme Court.

95 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Michigan Railroad Commission petitioner, and The Michigan Central Railroad Company, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Con-
96 stitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the

title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said respondent as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 25th day of November, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

To the Supreme Court of the United States:

The execution of the within Writ appears by the transcript of record hereto annexed.

Dated, Lansing, Michigan, December 23, 1912.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

97 Supreme Court of the State of Michigan.

THE MICHIGAN CENTRAL RAILROAD COMPANY, Respondent and Plaintiff in Error,
vs.
MICHIGAN RAILROAD COMMISSION, Relator and Defendant in Error.

IN THE SUPREME COURT, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record, and of all proceedings had and determined in the above entitled cause by said Supreme Court, including the written decision and reasons therefor, signed by the Judges of said Court, and filed in my office, as appears of record and on file in said cause; That I have compared the same with the orig-

inal and it is a true transcript therefrom and of the whole thereof; that attached thereto are the petition for the Writ of Error, the Writ of Error, with allowance endorsed thereon, the citation with acceptance of service endorsed thereon by the attorney and by the Chairman of the adverse party, a copy of the bond duly approved, together with the assignments of error in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at the City of Lasing, this 23d day December in the year of our Lord, one thousand nine hundred and twelve.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: File No. 23,489. Michigan Supreme Court. Term No. 416. The Michigan Central Railroad Company, plaintiff in error, vs. The Michigan Railroad Commission. Filed January 7, 1913. File No. 23,489.

No. 28489

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

THE MISSOURI CENTRAL RAILROAD COMPANY,

Plaintiff in Error,

vs.

THE MISSOURI PACIFIC RAILWAY COMPANY,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES H. HUTTIG,

Attorney for Plaintiff in Error.

HENRY RUSSELL,

Of Counsel.

Hudson Printing Co. Book and Job Printers, St. Louis.

INDEX.

CASES CITED.

No. 23489.

Supreme Court of the United States

THE MICHIGAN CENTRAL RAILROAD COMPANY,
Plaintiff in Error.

vs.

THE MICHIGAN RAILROAD COMMISSION,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

STATEMENT OF FACTS.

The Michigan Central Railroad Company, plaintiff in error, is a corporation existing under the General Railroad Law of the State of Michigan (Sec. 6223 et seq., Compiled Laws of Michigan of 1897), and as lessee operates the Detroit & Bay City Railroad, extending from Detroit to Bay City, Michigan, passing through the village of Oxford, Michigan, said line of road being part of its system of lines extending through the State of Michigan and into the states of Illinois, Indiana Ohio, and through the Dominion of Canada, and over which it transports passengers and property in interstate and foreign commerce as well as intrastate commerce (R., 1, 38-39).

The Michigan Railroad Commission, defendant in error, is a public administrative body continued and existing under Act number 300 of the Public Acts of the State of Michigan of 1909 (Public Acts of Michigan of 1909, p. 704) entitled:

> "An Act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and to prescribe penalties for violations hereof."

An administrative body by the same name was created by Act 312 of the Public Acts of Michigan of 1907 (Public Acts of Michigan of 1907 p. 417). The proceedings in this case were originally commenced before such Commission and were pending when the Act of 1907 was repealed and substantially re-enacted by Act 300 of the Public Acts of 1909.

Section 49 of the latter act preserved all proceedings had under the law of 1907 and authorized the defendant in error to proceed with the determination thereof and the enforcement of orders made therein. (Public Acts 1909 of Michigan, p. 732).

The Detroit United Railway was organized December 31, 1900, under the provisions of "An Act to provide for the formation of *street railway companies*" (Chap. 168, Compiled Laws of Michigan of 1897, Sec. 6434, et seq). So much of this statute as is pertinent to the case is printed in Appendix A, pp. 44-45).

It operates a line of *street railway* from Detroit, Michigan, to Flint, Michigan, extending through the village of Oxford to Ortonville, in the county of Oakland, Michigan, and the villages of Goodrich and Atlas, in the County of Genesee, Michigan (R. 1, 2, 39). It also operates other street railways in Detroit and its vicinity and elsewhere in the State of Michigan (R. 1).

Some of the complainants before the Michigan Railroad Commission reside in the village of Ortonville, which has a population of about 350, and others in the village of Goodrich, which is in Atlas Township, the whole township having a population of about 1,100 (R. 10). Ortonville is 10 miles from Oxford, and 18 miles from Flint, and Goodrich is 16 miles from Oxford and 12 miles from Flint (R. 10-11). The distance from Oxford to Flint is 28 miles on the line of the Detroit United Railway. Davison, a station on the Grand Trunk Western, a steam railroad, is 8 miles from Goodrich. Grand Blanc, a station on the Pere Marquette, a steam railroad, is about 8 miles from Goodrich. The country surrounding Goodrich and Ortonville is an agricultural community (R. 11).

Oxford is a village of 1,000 or 1,200 people and is served by the Michigan Central and Pontiac, Oxford and Northern Railroads (R. 11-12). Through Flint are the Grand Trunk Western and Pere Marquette railroads (R. 11).

The Michigan Central Railroad Company, plaintiff in error, maintains passenger and freight depots and other reasonable facilities for the receipt of passenger and freight traffic at the village of Oxford and also at Orion and Metamora, villages on its line of road in the immediate territory where Ortonville and Goodrich are located (R. 2, 40).

January 14, 1908, Sweers and Wilders, and others of Ortonville, filed with defendant in error a petition (Ex. "A," R. 6-7), asking that a physical connection be made between the Michigan Central Railroad Company and the Detroit United Railway Company at the Village of Oxford, for the "interchange of cars, carload shipments, less than car load shipments and passenger traffic." (R. 7).

January 17, 1908, D. M. Scriver and others at Goodrich, filed a similar petition with defendant in error against the Detroit United Railway Company and the Michigan Central Railroad Company asking substantially the same relief (Ex. "A," R. 7-8).

Plaintiff in error answered the petitions, asserting among other things, that defendant in error had no power or authority to order such connection for the purposes mentioned in said complaints. (Opinion of Commission, R. 10; Answer of Plaintiff in Error in mandamus proceedings, R. 40).

Sweers and Profrock et al. also filed a similar petition against the Detroit United Railway and the Grand Trunk Western Railway, praying for a similar connection for the same purposes at Flint, Michigan (R. 10). The matters were heard together.

The Michigan Railroad Commission after the hearing filed its opinion June 5, 1908 (R. 3), which is set out at length in the record (R. 9-16), and on the same date made its order requiring the Detroit United Railway and plaintiff in error to make physical connection of their tracks at Oxford, Michigan, on or before August 15, 1908, and "thereafter interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of Section 7 of Act 312 of the Public Acts of 1907," and if the two corporations failed to agree upon the point of such physical connection the commission would by supplemental order determine such location (Ex. "D," R. 17).

Section 7, Subdivision (b) of Act 312 of Public Acts of

1907, was re-enacted in precisely the same language as Section 7, Subdivision (b) of Act 300 of the Public Acts of 1909, and is set out in Appendix B, p. 47.

The parties not having fixed the point of physical connection (R. 3), the Commission, November 27, 1908, by a further order designated the point and extended the time for installation thereof to December 11, 1908 (Ex. "E," R. 18). Such physical connection was thereafter installed by the two companies, the Michigan Central protesting however, that it did not admit the validity or reasonableness of the above mentioned orders, and particularly so much thereof as required the intercharge of cars, carloads and less than carload shipments and passenger traffic (R. 41).

February 10, 1910, the Commission of its own motion (R. 19) made a further order requiring the parties to appear before it "for a hearing to determine the kind and quantity of business, cars, carload shipments, less than carload shipments and passenger traffic to be interchanged between said defendant railroads at said point in accordance with said order of June 5, 1908" (Ex. "1," R. 45-46). In response to the order Mr. S. W. Brown, general superintendent of plaintiff in error, and Mr. Van De Mark, one of the attorneys for the Detroit United Railway, were interrogated by the Commission March 2, 1910, and this examination is set out in the record (Ex. "F," R. 18-38, 59). No further order was made by the Commission.

Plaintiff in error although installing the physical connection under the circumstances above stated, declined to otherwise comply with the order, believing it invalid and without authority for the reasons hereinafter shown.

The Grand Trunk Western Railway filed a bill in the Wayne Circuit Court, in Chancery, restraining the Commission from enforcing its order to make a physical connection and interchange of traffic with the Detroit United Railway at Flint, which action is pending and undisposed of (R. 40).

Belt Line and Terminal Railroads in the State of Michigan vary in length from a fraction of a mile to 15 or more miles. Cars and carloads of freight are transported to and from industries along said lines of tracks of such railroads under a local switching tariff. Through billing of freight between railroads and such belt and terminal lines is not customary or usual (R. 4, 42).

The Michigan Railroad Commission, the defendant in error, June 17, 1910, filed its petition in the Supreme Court of the State of Michigan, praying that the plaintiff in error, be required to show cause why a writ of mandamus should not issue requiring it to comply with the order of the Commission made June 5, 1908,

> "and to deliver to the Detroit United Railway Company at the village of Oxford in the county of Oakland freight cars and freight in carload lots to be delivered by said company to shippers and consignees along the line of the said Detroit United Railway Company at the said village of Oxford and between the village of Oxford and the city of Flint, in the same manner and under the same general conditions except as to motive power as belt line railroads and terminal railroads are now used for like purposes; and to receive from the said Detroit United Railway Company at the village of Oxford freight cars in carload lots delivered to it under like conditions; as ordered by said Commission and required by subdivision (b) of Section 7 of Act 312, Public Acts of 1907, and subdivision (b) of Section 7 of Act 300, Public Acts of 1909." (R. 5).

The plaintiff in error (respondent in the Michigan Supreme Court) answered showing cause, and among other things averred (and it was not denied) that the Detroit United Railway was not in fact or in law a belt line or terminal railroad, nor was that portion of its line between Oxford and Flint a belt ro terminal railroad (par. 15, 16, R. 41-42). It also averred that the Detroit United Railway was not authorized by the law under which it was organized and existing to do a railroad business within the meaning of the statutes of the State of Michigan, or to receive for transportation over its line of street railway freight traffic or freight cars of the character transported and carried over the lines of the Michigan Central Railroad, and that it had not been authorized, nor was it within the power of the several municipalities under which the Detroit United Railway obtained its franchise to operate to transport such freight traffic or freight cars (par. 15, R. 41) and that the street railway company was wholly without equipment of freight cars or rolling stock with which it could make the interchange of business with the railroad company (Par. 15, R. 41).

And also averred (and it was not denied) that in conducting its business, and more particularly its interstate business,

it used cars of other railroad companies; that these cars are used under mutual contracts and agreements between plaintiff in error and the other railroad companies under which it assumed the responsibility for the reasonably prompt return of the cars, paying a compensation for the use, and also agreed to keep them in good repair and comply with the laws of the state and of the United States relating to safety appliances; that under such contracts it had no power, authority or permission to allow them to be used or passed into the possession or control of the Detroit United Railway Company (Par. 24, R. 40).

The answer of the plaintiff in error also claimed, among other things, that the order of the Michigan Railroad Commission of June 5, 1908, was invalid, and of no force or effect (R. 43-44):

> "Because to enforce said orders of said Michigan Railroad Commission would deprive this Respondent of its property without due process of law would violate * * * the fourteenth amendment to the Constitution of the United States.
>
> Because to enforce said subdivisions of said statutes of the State of Michigan set forth in the order, would deprive this Respondent of its property without due process of law and would violate said section of the * * * Constitution * * * of the United States last above mentioned.
>
> Because said Michigan Railroad Commission is without power or authority to require, command or direct this Respondent to enter into any contract, agreement or other arrangement for the interchange of cars and carload or less than carload shipments or passenger traffic with said Detroit United Railway Company, or to fix or determine the terms or conditions of any such contract and said order, so far as it purports so to do violates said sections and parts of the Constitution of the * * * United States hereinbefore set forth.
>
> Because said section of the statutes of the State of Michigan, so far as the same purport or attempt to require, command or direct this Respondent to enter into any contract, agreement or arrangement with said Detroit United Railway Company for the purposes aforesaid or any of them, violate * * * the Constitution * * * of the United States hereinbefore recited.
>
> Because said Michigan Railroad Commission is without power or authority to require the interchange of

cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose to require the physical connection of tracks between railroads and street railways.

Because said Michigan Railroad Commission is without power or authority to give or grant, in any manner or to any extent, to said Detroit United Railway Company, the use of the tracks or terminal facilities of this Respondent.

Because said orders and the statutes of the State of Michigan referred to therein, requiring as they do the delivery by this Respondent, of cars containing carload and less than carload shipments and passenger traffic beyond the right of way of this Respondent is a direct burden upon and regulation of interstate commerce in which it, Respondent, is employed as aforesaid and void and violate the third clause of section 8 of Article 1 of the Constitution of the United States vesting in the Congress of the United States the power to regulate Commerce with foreign nations and among the several states."

The hearing in the Supreme Court of the State of Michigan was on the petition and answer, no issue being framed. Under the rules of procedure in the State of Michigan in mandamus proceedings relator may rely on matters contained in the petition either expressly admitted or not denied by the answer (*Lewis vs. Board of Education*, 139 *Mich.*, 306, 309), and no issue having been taken or framed on the facts averred in the answer it to that extent must also be taken as true (*Indiana Road Machine Co. vs. Keeney*, 147 *Mich.*, 184, 186).

The Supreme Court of the State of Michigan rendered an opinion denying the claims of the plaintiff in error and ordering the writ of mandamus to issue as prayed for by the Michigan Railroad Commission. The opinion is set out in the Record (R. 48-53) and the final order was entered on the opinion October 16, 1912, directing the said respondent to forthwith, at the point of said physical connection between its tracks and the tracks of the said Detroit United Railway in the Village of Oxford, Oakland County, Michigan, so far as same relates to intrastate traffic, interchange cars, carload shipments, less than carload shipments and passenger traffic, in accordance with the provisions of Subdivision "B" of Section 7 of Act 312 of the Public Acts of the State of Michigan of 1907, and as re-enacted and contained in Subdivision "B" of Section 7 of Act 300 of the Public Acts of the State of

Michigan, of 1909, and in accordance with the order of the relator of June 5th, A. D. 1908 (R. 53-54).

A writ of error was sued out and allowed November 25, 1912 (R. 63, 64).

ERRORS SPECIFIED AND RELIED ON.

The errors specified and relied on are as follows (R. 60-63):

1. The said Court erred in refusing to dismiss the petition of the said the Michigan Railroad Commission for a Writ of Mandamus, for the reason that the order of the Michigan Railroad Commission, under date of June 5, 1908, under the provisions of subdivision B of Section 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision B of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), which statute reads as follows:

> "(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic and for that purpose may require the construction of physical connections upon such terms as it may determine; Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes:"

was invalid and if enforced would deprive the Michigan Central Railroad Company of its property without due process of law, and violated the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

2. The said Court erred in refusing to dismiss said peti-

tion of said Michigan Railroad Commission for a Writ of Mandamus, for the reason that said subdivision (b) of said Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision B of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), is unconstitutional and void because it deprives The Michigan Central Railroad Company of its property without due process of law, and violates the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

3. That said Court erred in ruling that said order of the Michigan Railroad Commission of June 5th, 1908, made under the provisions of subdivision (b) of Sec. 7 of Act 312 of the Public Acts of 1907 (re-enacted as subdivision (b) of Sec. 7 of Act 300 of the Public Acts of the State of Michigan of 1909), did not deprive The Michigan Central Railroad Company of its property without due process of law and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

4. The said Court erred in ruling that said subdivision (b) of Sec. 7 of Act 312 of the Public Acts of the State of Michigan of 1907 (re-enacted in subdivision (b) of Sec. 7 of Act 300 of the Public Acts of the State of Michigan of 1909) did not deprive the Michigan Central Railroad Company of its property without due process of law and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

5. The said Court erred in refusing to dismiss said petition of said Michigan Railroad Commission for a Writ of Mandamus for the reason that the provisions of subdivision (b) of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision (b) of Sec. 7 of the Public Acts of Michigan of 1909), do not authorize said Michigan Railroad Commission by its order of June 5, 1908, to require, command or direct The Michigan Central Railroad Company to enter into any contract, agreement or other arrangement for the interchange of cars or carload, or less than carload shipments, or passenger traffic with said Detroit United Railway, and such order if enforced in that behalf would deprive said The Michigan Central Railroad Company of its property without due process of law, and would violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

6. The said Court erred in ruling and deciding that the

provisions of subdivision (b) of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision (b) of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909), authorized and empowered the Michigan Railroad Commission by its order of June 5, 1908, to require, command or direct The Michigan Central Railroad Company to enter into a contract, agreement or other arrangement for the interchange of cars and carload, or less than carload shipments, or passenger traffic, with said Detroit United Railway, and did not deprive The Michigan Central Railroad Company of its property and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

7. The Court erred in ruling that subdivision (b) of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision (b) of Sec. 7 of Act 300 of the Public Acts of Michigan of 1909) conferred upon the Michigan Railroad Commission power to require, demand and compel The Michigan Central Railroad Company to surrender and give to the Detroit United Railway the use of its cars and the cars of foreign companies in its possession, and did not thereby deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

8. The Court erred in ruling that subdivision C of Section 7, of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivision C of Section 7 of Act 300 of the Public Acts of Michigan of 1909), and which statute reads as follows:

> "(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connected tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and

> interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

authorized The Michigan Railroad Commission to fix the compensation for the use of the cars and the cars of foreign companies in the possession of The Michigan Central Railroad company, which it was required to surrender and give to the Detroit United Railway under the provisions of said order of said Commission, made June 5th, 1908, and did not deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provisions relating thereto contained in the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in ruling that the provisions of subdivision (b) when applied in connection with the provisions of subdivision (c) of Sec. 7 of Act 312 of the Public Acts of Michigan of 1907 (re-enacted as subdivisions (b) and (c) of Sec. 7, of Act 300 of the Public Acts of Michigan of 1909) did not deprive The Michigan Central Railroad Company of its property without due process of law, and did not violate the provisions relating thereto, contained in the Fourteenth Amendment to the Constitution of the United States.

10. The said Court erred in not dismissing the petition of said Michigan Railroad Commission for a Writ of Mandamus for the reason that said order of The Michigan Railroad Commission of June 5, 1908, and the sections of the statute of the State of Michigan hereinbefore referred to, requiring the delivery by The Michigan Central Railroad Company of cars containing carload and less than carload shipments and passenger traffic beyond its right of way imposes a direct burden upon, and is regulation of interstate commerce, and violates the third clause of Sec. 8 of Article I of the Constitution of the United States, which vests in Congress the power to regulate commerce with foreign nations and among the several states.

11. The Supreme Court of the State of Michigan erred in ruling that the said order of June 5, 1908, by said Michigan Railroad Commission and the statutes of the State of Michigan hereinbefore referred to under which said order was made, was not a burden upon or regulation of interstate commerce, and did not violate the third clause of Sec. 8 of Article I of

the Constitution of the United States, which vests in Congress the power to regulate commerce with foreign nations and among the several states.

12. The Supreme Court of the States of Michigan erred in awarding a writ of mandamus in favor of the Relator and against the Respondent.

POINTS OF DISCUSSION.

I.

Act 300 of the Public Acts of 1909 of the State of Michigan recognizes and preserves the distinctions which obtain in the State of Michigan between "street railways" and "railroads."

II.

Definition of "Belt Line" and "Terminal Railroads" and the manner in which they are used in Michigan.

III.

Subdivision (b) of Section 7 of Act 300 of the Public Acts of Michigan of 1909 is invalid in that its enforcement deprives plaintiff in error of its property without due process of law and violates the provisions of the Fourteenth Amendment to the Federal Constitution relating thereto, for the reason that as construed by the Michigan Railroad Commission and the Michigan Supreme Court it requires: (a) that the plaintiff in error deliver its cars to the Detroit United Railway for the use of the latter company; (b) and makes no provision for the paramount needs of the plaintiff in error of its own equipment; (c) nor for the prompt return or loss or damage to such equipment; (d) nor compensation for the use thereof; (e) it requires plaintiff in error to make delivery of property transported by it to a place off from its right of way which is not under its control.

IV.

The order of the Michigan Railroad Commission of June 5, 1908, is invalid for the reason: (a) that it is founded upon a law invalid as construed by said commission and the Michi-

gan Supreme Court; (b) the action of the Commission was arbitrary and unreasonable; (c) it does not undertake to provide a reasonable compensation to the plaintiff in error for the use of its cars; for loss, damage to, or detention of the cars; for needs of the plaintiff in error with respect to such cars; or for their prompt return.

V.

Section 7 (b) of the Act of 1909 as construed by the Railroad Commission and the Supreme Court and the orders made in pursuance thereof operate as a burden upon and interference with interstate commerce.

ARGUMENT.

I.

Act 300 of the Public Acts of 1909 of the State of Michigan Recognizes and Preserves the Distinctions Which Obtain in the State of Michigan Between "Street Railways" and "Railroads."

As Act 312 of the Public Acts of Michigan of 1907 was repealed and substantially re-enacted and enlarged by Act 300 of the Public Acts of 1909, references will be made to the latter statute, although some of the proceedings out of which this case arises were had under the Act of 1907.

In this discussion, unless otherwise specified, the word "railroad" will be used meaning corporations organized under the general railroad law, and "street railways" meaning corporations organized under the street railway act or other similar laws.

It will aid to an understanding of the meaning and effect of Subdivision (b) of Sec. 7 of Act 300 of the Public Acts of 1909 to make clear the distinctions which have always obtained in the State of Michigan between "railroads" and "street railways," and it will likewise aid to a proper construction to ascertain the meaning of the words "Belt Line Railroads" and "Terminal Railroads" and the manner in which they are "used" in the State of Michigan. The latter subject will be discussed under the succeeding division of this argument.

"Railroads" broadly and distinctly differ from "Street Railways," and it has always been the policy of the Legislature of Michigan to maintain this classification.

A "street railway" is constructed and operated on the public highways under the consent of the municipalities (Section 13 of the street railway act, Sec. 6446 C. L., 1897, Appendix A, p. 44), and is not an additional servitude and may be constructed without compensation to abutting owners.

Detroit, etc. Ry. vs. Mills, 85 *Mich.*, 634, 652-655.
Nichols vs. Ry. Co., 87 *Mich.*, 361, 368-369, 370-1.
People vs. Ry., 92 *Mich.*, 522, 524.
Dean vs. Ry., 93 *Mich.*, 330.
Detroit, etc. Ry. vs. Commissioner of R. R., 127 *Mich.*, 219, 230-231, 235.
People vs. Eaton, 100 *Mich.*, 208, 211.
Austin vs. Detroit, etc. Ry., 134 *Mich.*, 149, 152-153.
Mannel vs. Detroit, etc. Ry., 139 *Mich.*, 106, 108.
Ecorse Township vs. Jackson, etc. Ry., 153 *Mich.*, 393, 397.

A "railroad" before constructing its railway upon a public street or highway must obtain the consent of the municipality and pay damages and compensation to all abutting owners (subdivision 5, Sec. 9, General Railroad Law, Sec. 6234 C. L., 1897; see note 1 below), and a "railroad" is an additional servitude.

Note 1:

"and in case of the construction of such railway upon any public street, lane, alley or highway, the same shall be on such terms and conditions as shall be agreed upon between the railroad company and the common council of any city, or the village board of any village, or the commissioners of highways of any township in which the same may be; but such railway shall not be constructed upon any public street, lane, alley, highway or private way until damages and compensation be made by the railroad company therefor to the owner or owners of property adjoining such street, lane, alley, highway or private way and opposite where such railroad is to be constructed, either by agreement between the railroad company and each owner or owners, or ascertain as herein prescribed for obtaining property or franchises for the purpose of its incorporation to be paid to the owner thereof or deposited as hereinafter directed."

G. R. & I. R. R. vs. Heisel, 38 *Mich.*, 62, 66-67; *s. c.* 47 *Mich.*, 393, 396.
Cooper vs Alden, Har. Ch., 72.
Hoffman vs. Flint, etc. Ry. Co., 114 *Mich.*, 316, 319.
Detroit, etc. Ry. vs. Comsr. of R. R., 127 *Mich.*, 219, 231.
Ecorse Township vs. Jackson, etc. Ry., 153 *Mich.*, 393, 398.
Nichols vs. Ry. Co., 87 *Mich.*, 361, 372.
Keyser vs. Lake Shore, etc. R. R. Co., 142 *Mich.*, 143.

Under sections 19, 25 and 28 of Article 8 of the State Constitution, effective January 1st, 1909, the control of the public highways is expressly reserved to and placed in the cities, villages and townships. (Appendix C, p. 50).

Even under the Constitution of 1850 the right of control over the highways by municipalities was absolute.

City of Detroit vs. Ry. Co., 95 *Mich.*, 460.
Monroe vs. Detroit, etc. Ry., 143 *Mich.*, 315, 320-321.
Attorney General vs. Toledo Ry., 151 *Mich.*, 473, 477.

A "street railway" must lay its tracks in such mode and with such kind of rail as prescribed in the grant of authority from the municipality. (Sec. 6451 C. L., 1897. See Sec. 18, Appendix A, p. 45).

The rates of fare on a "street railway" are left to contract between the municipality and the corporation. (Sec. 6453 Compiled Laws, 1897. See Sec. 20, Appendix A, p. 45).

The decisions of the Michigan Supreme Court have long recognized the policy of the Legislature, and declared the well-defined distinction between "railroads" and "street railways."

In *Grand Rapids & Indiana R. R. Co. vs. Heisel*, 38 *Mich.*, 62, 66-68, Mr. Justice Cooley, speaking for the court, said:

> "It is, to my mind at least, doubtful whether it is competent for the public authorities to bind the interests of individuals by any consent they may give to the occupation for railroad purposes of a public highway, when the land over which the highway is laid is owned by private parties. If the railroads were only a city railway constituting a mere local convenience, and calculated to relieve the pressure of traffic and travel

upon the street, the question of course would be different. * * * A street railway for local purposes, so far from constituting a new burden, is supposed to be permitted because it constitutes a relief to the street; * * *

But we cannot say the same in the case of the ordinary railroad. It is not usual for such a road to be laid in one of the public highways, and the cases in which it is permitted are exceptional. For that reason, therefore, if for no other, the owner whose land is taken for a highway, * * * cannot be understood to have assented to its being appropriated, * * * to railway purposes at the discretion of the public authorities, and to have been compensated for such appropriation. Neither can the use of highway for the ordinary railway be in furtherance of the purpose for which the highway is established. * * * The two uses, on the other hand, come seriously in conflict; the railroad constitutes a perpetual embarrassment to the ordinary use. * * *."

Ecorse Township vs. Jackson, etc., Ry., 153 *Mich.*, 393, 397, 398. By Act 238 of the Public Acts of 1901, it was sought to graft upon the General Railroad Law authority for the organization of corporations to operate "street suburban and interurban" railroads where the motive power should be other than steam, and the court, after pointing out many distinctions between "railroads" and "street railways," used this pointed language:

"There is a well-defined distinction between the definitions of the words 'railroad' and 'street railway.' One is a word of general and extended meaning applying to all roads incorporated under the general law. The other is local in its signification, referring to transportation of a character entirely different from that of a general railroad. One has always been held to impose an additional servitude upon a public way for which abutting owners were entitled to compensation; the other, as already stated, has been held to add no such burden."

And again (p. 398):

"The object of the amendment of 1901 was to graft onto the general railroad law a section under which corporations organized under it could enjoy all the rights and benefits of street railways, and the further

right in townships to acquire franchises in the public highways without limit as to time, and without any control by the municipality as to fares, speed, and many other matters, at least as far as the provisions of the amendment are concerned all this to be accomplished by an agreement with a highway commissioner after obtaining consent of two-thirds of the abutting owners."

The act was held unconstitutional and void.
See also:

City of Mason vs. Lansing, etc., R. R. Co., 157 *Mich.*, 1, 18.

This distinction has also been recognized in the matter of taxation of "railroads" and "street railways,"

Detroit vs. Mfrs. R. R., 149 *Mich.*, 530, 534, 535,

and as well in the application of the criminal statutes relating to railroads.

People vs. Beebehyser, 157 *Mich.*, 239, 241.

In *City of Monroe vs. Detroit, etc., Ry.*, 143 *Mich.*, 315, 319, 320-321, it was held that a corporation organized under the "train railway" (a street railway act) law to operate a "street railway" and authorized under its franchise to make "all the necessary and convenient tracks * * * and connections" could not connect its tracks with a railroad organized under the General Railroad Law in the city streets, and that section 41 of the "train railway" act (Sec. 6432 C. L. 1897) did not deprive the municipality of its control over the public streets.

The "street railway act" originally contemplated only the transportation of passengers, and it was not until 1897 that corporations organized under it were authorized to carry freight of any sort. The act of 1897 (Act 102 Public Acts of 1897, Sec. 34, Sec. 6465 C. L., Appendix A, p. 45) granted a very limited authority in this respect.

This act of the Legislature must be considered a part of the charter of the Detroit United Railway Company:

Van Etten vs. Eaton, 19 *Mich.*, 187.
Attorney-General vs. Perkins, 73 *Mich.*, 303.
Dewey vs. Central Car, etc., Co., 42 *Mich.*, 399.

And it has long been a settled principle of construction of corporate charters that,

> "In charters of this description, no rights are taken from the public or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey."
> *Charles River Bridge vs. Warren Bridge*, 11 *Pet.*, 420, 549.

Mr. Justice Gray, in *Central Transportation Co. vs. Pullman Car Co.*, 139 *U. S.*, 24, 48, tersely states the rule:

> "The charter of a corporation, read in the light of any general laws which are applicable, is the measure of its powers, and the enumeration of these powers implies the exclusion of all others not fairly incidental."

Such is also the doctrine of the Michigan Supreme Court.

> *Orr vs. Lacey*, 2 *Doug.*, 230, 255.
> *Day vs. Spiral Spring Buggy Co.*, 57 *Mich.*, 146.

The limitations in the amendment of 1897 are significant, and stand as a plain declaration by the Legislature that "street railways" were not to have nor should they be allowed to exercise the extensive powers of "railroads" in the matter of freight traffic.

It is not necessary now to define just what sort of traffic is included in the general terms of the amendment, but speaking generally we may say that the intention of the Legislature was to permit the "street railway" to move in its cars the same articles that the farmer, merchant or other traveler on the highway might move by wagons and like vehicles in common use, or stated in a negative way, it does not authorize a traffic which would in character or form of movement operate as an additional servitude on the public highways.

We may safely say that it does not empower a "railroad" to do its business directly or indirectly over a "street railway," or a "street railway" to do a "railroad" business.

> *Nichols vs. Railway Co.*, 87 *Mich.*, 361, 370-373.

Act 300 of the Public Acts of 1909, creating the Michigan Railroad Commission, does not change the legislative policy. The word "railroad," it is true, is defined by subdivision

(c), Section 3 (Appendix B, p. 46), in a generic sense, so as to include all railroads, whatever the motive power, but in the same subdivision the large class of railways, which for convenience in this brief we have denominated "street railways," specifically described as "train railway," "street railway," "interurban or suburban railway" and "electric railway" are excepted from the operation of the act in particulars, over which the municipalities have absolute control—that is to say, franchise rights. The right of municipal control is made certain by the words of the last proviso.

The words describing the different forms of "street railways" are used interchangeably in some portions of the act, and in others one term is used undoubtedly in a generic sense as including all forms of "street railways."

An illustration of this as well as the distinction between "railroads" and "street railways" is found in subdivision (b) of Section 4, which is as follows:

> "All *railroads* incorporated under the General Railroad Law of this state, as between themselves, and all *electric railroads*, as between themselves, shall establish through routes and just and reasonable rates applicable thereto, except as hereinafter provided."

In section 35, relating to the establishing of flagmen and signals at highway crossings the words "street railway" and "electric railway" are used interchangeably, and as including corporations other than "railroads," the latter term referring to corporations under the general raiload law (Appendix B, p. 48).

In Section 44 the "railroads" are mentioned as distinct from "street railways," "interurban railways" and "suburban street railways." (Appendix B, p. 49).

II.

The Definition of "Belt Line" and "Terminal Railroads" and the Manner in which they are Used in Michigan.

The words have not received any judicial construction by Michigan courts.

Bridwell vs. Gates City Terminal Co., 127 *Ga., pp.* 520, 524-525, *s. c.* 10 *L. R. A., N. S.*, 909, 912 (p. 524):

> "The expression 'terminal company' has not received any judicial construction in this state. There is no provision of law dealing with such a company by that name, or classifying it as an incorporation. If it is incorporated for the purpose of building and operating a commercial railroad, though short, as a common carrier, it must be incorporated as a railroad company and obtain its charter from the Secretary of State. * * * But we cannot see how as a matter of law it can be said that a company incorporated for the purpose of building and operating a railroad three miles in length for the carrying of goods and passengers can be said to be no railroad company at all because it selects the name 'terminal company.'"

In *State vs. Martin*, 51 *Kan.*, 462, 478, the word "terminal" is used with reference to what the facts show to have been a "belt" line company encircling Kansas City, and having reference to the use of such rights the Court said (p. 478):

> "The convenience and necessity of belt or terminal roads in crowded and populous cities is well understood and has been frequently demonstrated. A single road which reaches a union and other depots, as well as warehouses, elevators, and other places in the city, is made to serve all the railway companies operating to and from the city, when it would be impracticable and perhaps impossible for each of the companies to secure an entrance and build its own line to the depots, stations and storehouses in all parts of the city where railroad service is required. By this means unnecessary roads and expenses are avoided, and the facilities and convenience of the public are greatly enlarged. Every unnecessary mile of railroad track adds to the cost of transportation and as the public which uses these roads is required to bear the burden of this extra cost, it is clearly in the interest of the public that a terminal road, which affords transportation to all companies and people, should be constructed and maintained."

In *Collier vs. R. R.*, 113 *Tenn.*, 101, 106, 115, 116, which involved the rights of a "terminal" or "belt" line railroad, and in which several persons familiar with railroads testified, the court summing up the testimony said (p. 106):

"These gentlemen say, that in their view of the matter, the term 'belt railway' or 'terminal railway' has no particular significance to distinguish it from an ordinary commercial railway."

And again (p. 115):

"* * * we think that a line may be made of reasonable length and embrace within itself a reasonable area—such, for instance, as the limits of a city—if the several connecting routes are named, each having termini. In such a case the final line or route would have two termini, one of which would be the beginning point."

And again (p. 116):

"We are of opinion, therefore, that the fact that the road is somewhat circular in form or shape, or a polygon with many sides, and its final terminus, at the same place as its initial, does not render the charter void. * * *"

Perhaps definition will be aided by opposing to the citations above given a definition of "trunk railway."

In *Diebold vs. Kentucky Traction Co.*, 117 *Ky.*, 146, 152, 153, it was said:

"We think there can be no doubt that, giving the phrase 'a trunk railway' a rational interpretation, it means, and can mean nothing else but a commercial railway or railroad connecting different cities within a state and facilitating commerce between them, or between cities in different states."

The testimony of Mr. Brown, at the hearing before the Railroad Commission, is in accord with the definitions above given. He is the general superintendent of plaintiff in error, whose road reaches the principal business centers of the lower peninsula and crosses or has connection with the other principal roads in the same territory. He says (R. 21):

"Q. Is there any distinction between belt line and terminal railroads?

A. No. Terminal railroads, under that name, perform the same service as railroads which are called belt lines, and vice versa."

And (R. 21):

"A. Both (are) for the purpose of use at some particular city."

And (R. 22):

"I think that it doesn't need to be of any particular length. The length would depend, and does depend, on the size of the community or city that it serves. The principle of a belt line is to get around the desirous cities and leading industries located in that territory and connect with the several railroads. It has been found as cities develop it is a hard matter to get freight through the heart of the city, and the railroads all center themselves for the purpose of relieving congestion, and for the prompt movements of freight the belt line is built, and there may be 5 or 10 railroads connected up by that belt line."

"A. I don't know of a belt line or terminal railroad other than what is a local proposition, pure and simple."

And again (p. 32):

"Q. Now, as I understand you to define a belt line, or the belt line service, it is a service to a single locality or community and its vicinity?

A. Yes, sir.

* * * *

Q. And the length of it, and the shape, as being circular or otherwise, depends upon that particular locality or community served?

A. Yes, sir."

Referring to Detroit, the largest commercial center, Mr. Brown said (R. 21):

"Q. Now, as to the belt and terminal railroads at Detroit. Can you indicate the different roads with which you are familiar and the distance, the length of the lines, in a general way?

A. There are only two at Detroit that I know of, possibly that's all there are. One of them is, I should say, 3 miles in length; that's the Michigan Central belt. The Detroit Belt Line, approximately 3 miles in length. It extends from our Bay City Division to a point south of Jefferson avenue. Then there

is another belt line that is longer, I presume in the neighborhood of 7 miles, maybe 9 miles, possibly 10. It is still being constructed. It extends from Woodward avenue to the north, and Jefferson avenue to the east. I think it is considered 7 miles from our Bay City Division to Jefferson avenue, and then between our Bay City Division and Woodward avenue, I am not sure just how much is constructed."

That the service performed by belt line or terminal railroads is not a line transportation movement but is a mere switching or delivery service of cars which have arrived at the point of destination, or a service in assembling cars for the purpose of a line transportation movement, in other words, a purely local terminal movement is made clear by the following extracts from the testimony of Mr. Brown (pp. 21-22):

"Q. Now, are you familiar with the conditions under which cars are taken by the belt line or terminal railroads from the railroad companies and delivered to consignees?

A. Yes, sir. On what is called a switching charge in the published tariff.

Q. No other bill of freight as between the railroad and the belt line or terminal railroad?

A. No. If it is for some particular concern at Detroit, it is noted on the bill that it is for a certain track, and that track may be on a belt line, and it goes to its destination under a switching charge.

Q. Who collects that switching charge?

A. The belt line.

Q. What arrangement do they have with reference to it? Do they have any arrangement with reference to the length of time cars may be kept from the railroad company by the belt line railroad of the consignee. What rules govern the length of time?

A. Only that the industry is under the car service rules.

Q. And those charges, of course, for the switching charge, is fixed for the belt line or terminal railroad?

A. In the published tariff."

(R. 25-26):

"Mr. Dickinson: Mr. Brown, is there any terminal or belt line in Michigan that have equipment of their own?

A. Well, the Michigan Central, of course, own and operate a belt line, operated by Michigan Central equipment, as well as equipment delivered by other roads, where we interchange with those roads. The only belt line I know of in Michigan, Mr. Dickinson, are those at Detroit, and if you call this one at Lansing, that railroad. Possibly a line we have at Jackson might be termed a belt line, although it isn't, in the true sense of the word; and our local track at Bay City that goes out to serve industries. Other than the Michigan Central owning equipment for the Detroit belt lines, I don't know of any line in Michigan that owns its own equipment, nor do I know of any other belt line."

And (R. 26-27):

"Mr. Scully: Mr. Brown, you said there was some objection on the part of your company because you might be obliged to deliver cars promiscuously connecting in this way. If there is any doubt—if this order was amended so as to provide for the delivery of cars at Ortonville, Goodrich and Atlas, the only three places, would your road object to that?

A. Yes, sir; there is absolutely no difference.

Mr. Scully: What would be the particular difference between that and a terminal or belt line delivery?

A. The cars would be taken out of the local territory and we would lose control of the equipment. We are able on all of the belt line railroads to follow our cars up and check them to see about the car service feature.

Mr. Scully: Why wouldn't you be able to follow up those cars if they went to these points on the D. U. R. just as much as you would on a belt line or terminal railroad?

A. Because they are outside of the local point to which the delivery is made.

Mr. Scully: You don't mean to say you follow up those cars with your own motive power?

A. Our own yard men and checkers.

Mr. Scully: Would there be any objection to your going over the D. U. R. with your yard men and checkers?

A. Yes, sir.

Mr. Scully: In what way? Do you think the D. U. R. would object?

A. I think so. They don't ordinarily send those

car clerks on railroads to follow up cars in that way. We have different sections of any village or city, covered by different clerks and they cover a certain territory."

And on p. 30:

"A. The only difference I would see is they would get away from our supervision and control and our representatives at Oxford. In delivering to belt line we have our representatives with our cars on that belt line.

Mr. Law: At all points on that belt line?

A. Yes, sir.

Mr. Law: Couldn't your agent at Oxford keep track of the cars on the D. U. R.?

A. He couldn't do it. He couldn't go out to Ortonville and these other points that are several miles away."

III.

SUBDIVISION (b) OF SECTION 7 OF ACT 300 OF THE PUBLIC ACTS OF MICHIGAN OF 1909 IS INVALID IN THAT ITS ENFORCEMENT DEPRIVES PLAINTIFF IN ERROR OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND VIOLATES THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION RELATING THERETO, FOR THE REASON THAT AS CONSTRUED BY THE MICHIGAN RAILROAD COMMISSION AND THE MICHIGAN SUPREME COURT IT REQUIRES: (a) THAT THE PLAINTIFF IN ERROR DELIVER ITS CARS TO THE DETROIT UNITED RAILWAY COMPANY FOR THE USE OF THE LATTER COMPANY; (b) AND MAKES NO PROVISION FOR THE PARAMOUNT NEEDS OF THE PLAINTIFF IN ERROR OF ITS OWN EQUIPMENT; (c) NOR FOR THE PROMPT RETURN OR LOSS OR DAMAGE TO SUCH EQUIPMENT; (d) NOR COMPENSATION FOR THE USE THEREOF; (e) IT REQUIRES PLAINTIFF IN ERROR TO MAKE DELIVERY OF PROPERTY TRANSPORTED BY IT TO A PLACE OFF FROM ITS RIGHT OF WAY WHICH IS NOT UNDER ITS CONTROL.

The statute requiring the establishment of through routes does not require the joinder of "railroads" and "street railways" in such routes, and the Railroad Commission is without authority to authorize such a joinder. This is manifest on the face of the statutes. (Sec. 4 (b) and 22 (e). Appendix B, pp. 46, 48).

The words "electric railroads" in Section 4 (a) are used in the generic sense of all railways except those organized under the General Railroad Law.

Section 7 (b) does not purport to prescribe a through route. On the contrary the proviso to that section "*that nothing in this act shall be construed to require through billing of freight* as between steam and electric, suburban or interurban railroads" was undoubtedly inserted for the express purpose of negativing any such inference.

That an exchange of traffic between "street railways" and "railroads" was not contemplated by Section 7 (a) is evident by a comparison of Section 7 (b) with Section 7 (a). (See Appendix B, p. 46).

It needs no enumeration of items nor an analysis of details to demonstrate that Section 7 (a) was intended to apply only to railroads operating under the General Railroad Law, and having the powers and liabilities and duties imposed by that law, and that it has no application to street railways with their limited powers and controlled as they are by the several local municipalities.

Subdivision (b) of Section 7 in words vests authority in the Commission *only* when it is practicable and will not endanger the tracks or equipment of either party to require "railroads" and "street railways" to *interchange* (a) cars; and (b) carload shipments; (c) less than carload shipments; (d) passenger traffic; (e) and if necessary physical connections for these purposes; subject, however, to the following limitations: (a) There shall be no *through billing of freight;* (b) "street railway" lines "*may* be used for the handling of freight in car lots in steam railroad freight cars *between shippers or consignees and the steam railroads;*" and (c) "in the same manner and under the same conditions, *except as to motive power,* as belt line railroads and terminal railroads are now or may hereafter be used for like purposes."

Any question as to the right of the Commission to compel physical connection between railroads and street railways is eliminated for the purposes of this case, as the physical connection has been actually constructed under the conditions stated in the answer of plaintiff in error in this proceeding (par. 14, R. 41).

That the plaintiff in error may not refuse to carry passen-

gers reaching its line at Oxford over the lines of the Detroit United Railway, or to receive freight coming over the Detroit United Railway lines and tendered to it at Oxford, may be admitted, provided, of course, that the passenger traffic and the freight is tendered at the places established by it for that purpose.

Atchison, etc., R. R. Co. vs. Denver, etc., Co., 110 *U. S.*, 667, 681-682.

The statute does not require the Michigan Central to accept such passengers on through tickets issued by the Detroit United, or to accept freight on a through billing. As already pointed out, the statute in substance expressly states that cannot be required, and unless there is language in the statute which legally requires a terminal delivery on the line of the street railway, the relation between themselves is that of the common law. The Michigan Central is not bound to carry beyond its own line, nor to enter into contracts for through routes. In other words, the point of destination in its contract is the point of local billing, in this case Oxford.

Atchison, etc., R. R. vs. Denver, etc., Co., 110 *U. S.*, 667, 680, 681-682, 683.

Oregon Short Line vs. Northern Pacific, 51 *Fed. Rep.*, 465, *s. c.* 61 *Fed. Rep.*, 158.

Little Rock, etc., Co. vs. St. Louis, etc., Co., 41 *Fed. Rep.*, 559, 563.

Little Rock, etc., Co. vs. East Tennessee, etc., Co., 47 *Fed. Rep.*, 771, 781.

Prescott vs. Atchison, etc., Co., 73 *Fed. Rep.*, 438, 439.

Chicago City Ry. Co. vs. City of Chicago, 142 *Fed. Rep.*, 844, 847-848.

In all such cases the passengers would transfer from the cars of the Detroit United to those of the Michigan Central, at the depot or station of the latter at Oxford. The freight whether in carloads or less than carloads, would be transferred at the same place. So far as the statute or the order of the Commission requires these things to be done plaintiff in error has at all times stood ready to perform its duty in the premises. In fact such was the course of business when the complaints were filed with the Commission (Opinion of Commission, R. 11).

It may be true that under the provisions of Subdivision (c) of Section 7 the plaintiff in error would be bound to draw

over its lines as part of a transportation movement, as distinquished from a terminal delivery, a car tendered to it by the Detroit United Railway if the car was constructed and equipped as indicated in this section of the statute. But it does not follow that a "street railway," as is the Detroit Railway, can be required to haul in "transportation service" over its line a car tendered to it by the plaintiff in error, nor that the Michigan Central, the plaintiff in error, can be required to tender or deliver a car to the street railway for such "transportation service."

Indeed the statute does not require any such service, but on the contrary, negatives any thought of treating the "street railway" as a connecting carrier. At best it is but a mere permission, so far as the legislature can grant it, that the tracks of the street railway *may* be used for the delivery of freight in carloads, "in steam *railroad freight cars between shippers or consignees and the steam railroads.*"

In other words section 7 (b) simply expresses the common law duty of common carriers. Through routing of cars and carloads is not a common law duty, nor is it a duty imposed as between "railroads" and "street railways," by the Michigan Statute, as already pointed out.

The most that can be claimed is that it requires the handling of carload lots in steam railroad freight cars solely for the purpose of a *terminal delivery* at the point of destination on the line of the plaintiff in error, viz: Oxford.

Passing for the moment the question of whether the plaintiff in error can be required to make delivery off of its own right of way where it maintains reasonable facilities at the point of destination it is manifest that the command of the Michigan Railroad Commission and the Supreme Court is that the plaintiff in error in effect, if not in name, enter into a contract for the transportation and delivery of passenger and freight traffic, and as well its cars where the shipment is in carload lots, to points 10, 16, 18 and 28 miles off from its line and right of way and upon the line of another carrier.

The command of the statute is that the "street railways" "may be used for the handling of freight in carloads lots in steam railroad freight cars *between shippers or consignees* and the *steam railroads,* * * * as belt line railroads and terminal railroads" are used.

Neither the statutes nor the decisions of the Michigan Supreme Court define such usage. It was therefore a question of fact to be determined in the first instance by the Commission.

As already pointed out, belt or terminal railroads are purely local in operation, confined to a single city or its environs and used for the purposes of making delivery of such freight as has arrived at the destination point or for accumulating freight for shipment from that city.

Oxford, the junction point with the Detroit United Railway, is a village of 1000 or 1200 people (R. 22), and the plaintiff in error maintains at that point ample and sufficient passenger and freight depots and other reasonable facilities for the receipt of passengers and freight traffic passing over its line (R. 40).

The petition for a mandamus prays a service between Flint and Oxford and all the intervening towns (R. 5) covering a total distance of 28 miles (R. 5). Indeed it was to compel such service that the original complaints were made before the Commission, by merchants of the villages of Goodrich and Ortonville (R. 6-8). In other words, a general *through* service was demanded, under a statute which at best calls for but a *terminal delivery service.* The Commission so ordered and its order is affirmed by the Supreme Court.

As thus construed we submit this section of the statute and as well the order of the Commission and of the order of the Supreme Court affirming it are invalid, and in violation of the Fourteenth Amendment to the Federal Constitution.

The Supreme Court justified its command on the ground that Subdivision (c) of Section 7 (Appendix B, pp. 47-48) provided for due compensation.

It may be true that this section authorizes the Commission to fix compensation to the Detroit United Railway for the "transportation" of such cars as it may receive from the Michigan Central and to the Michigan Central for a like "transportation" movement.

But assuming that the statute compels the Michigan Central to make contracts for delivery off from its own line of road and at distant points, as above mentioned, we submit with all deference that this court will look in vain for any

language in this section of the statute which provides compensation to the Michigan Central for—(a) the use of its cars while on the line of the Detroit United; (b) compensation for the detention thereof, or for any loss or damage thereto; (c) any authority or regulation for the prompt return of such cars; (d) nor does the statute recognize the possible paramount needs of the Michigan Central for its own equipment on its own lines.

As construed by the Michigan Railroad Commission and the Supreme Court the statute becomes a bald command that the Michigan Central turn its property over to the Detroit United for the use of the latter without compensation to it and without reasonable rules under which such use of the property may be had.

But the statute is also invalid for the reason that as construed by the Commission and the Supreme Court it requires a delivery off from its own lines at the point and time when the "transportation service" required of the Michigan Central has been completed, and this is true whether such delivery be confined to Oxford or extended to the communities of Goodrich, Ortonville, Atlas or Flint.

The Michigan Railroad Commission and the Supreme Court have construed the statute as a command that notwithstanding plaintiff in error has and maintains adequate facilities for the purposes of making delivery at Oxford, the point of destination in any transportation movement, it must nevertheless at such point turn the property over for delivery to the street railway. We submit that this is a taking of property in a most effective sense, and such a construction of the act is in direct conflict with the rules laid down by this and other courts.

The *Central Stock Yards Cases* sustain the contentions of the plaintiff in error. The essential facts in these cases briefly are as follows: The Louisville & Nashville R. R. Co., established the Bourbon Stock Yards in the City of Louisville, which was its delivery point for shippers of stock whether originating outside the State of Kentucky *or within it.* The Southern Railway had established similar yards in the City of Louisville which were known as the Central Stock Yards. There was a physical connection between the tracks of the two companies. Two actions were commenced by the Central Stock Yards, first, by filing a bill in Chancery in the State Court, and, second, after certain proceedings were there had

subsequently filing another bill in the Federal Courts. The later proceeding reached the earlier determination. By the bill filed in the Federal Court the Central Stock Yards asked that the Louisville & Nashville Ry. Co. be compelled to receive live stock tendered to it outside of the State of Kentucky for the Central Stock Yards station and to deliver the same at a point of physical connection between its road and the Southern for ultimate delivery to the Central Stock Yards. This right was claimed under Section 3 of the Interstate Commerce Act (24 Statutes at Large, 379), counting particularly upon the following language:

> "Every common carrier subject to the provision of this act, shall * * * afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith. * * *"

(Compare the language of Sec. 7-a and 7-b of the Michigan Statute. See Appendix B, pp. 46-47).

And also under section 213 of the Kentucky Constitution, the essential portions of which are as follows:

> "All railroad, transfer, belt lines and railway bridge companies * * * shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all freight in carloads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and despatch, and without any discrimination; * * * and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies." * * *

The Federal litigation is first reported under the title of *Central Stock Yards Company vs. Louisville & Nashville, etc., Co.*, 118 *Fed. Rep.*, 113, and under the same title it reached the Supreme Court and is reported in 192 *U. S.*, 568. The following quotations are from the latter case (pp. 570-571):

> "If the cattle are to be unloaded, then, as was said in *Covington Stock Yards Company vs. Keith*, the defendant has a right to unload them where its appliances for unloading are, and cannot be required to establish

another set hard by. On the other hand, if the cattle are to remain in the defendant's care it cannot be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant or to require it to make one."

In support of this view the Court cited many cases to which reference is made in this brief, and then said (p. 571):

"What we have said applies, in our opinion, to the Constitution of Kentucky with little additional argument. The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies, must be taken to refer to cases where the freight is *destined to some further point by transportation over a connecting line.* It cannot be intended to sanction the *snatching of the freight* from the transportation company *at the moment and for the purpose of delivery.* It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained. In view of the course taken by the argument we may add that we do not find a requirement that the railroad company shall deliver its own cars to another road."

(P. 572):

"We have discussed the case as if the two stock yards were side by side. They were not, but they both were points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as bona fide further transportation over a connecting road and within the requirements of the Kentucky Constitution. However that may be, we are of opinion that the court below was entirely right, so far as appears, in treating this as an ordinry case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side. As the defendant would not be bound to deliver at the Central Stock Yards if they were by the side of its tracks, its obligation is no greater because of the intervention of a short piece of track of another rail-

road. As we have said, the delivery would have to be made either by unloading or by the surrender of the defendants' cars."

After this decision was rendered, the proceedings which had been instituted in the State Court was prosecuted, reliance there being had upon the provisions of the State Constitution which are quoted above. This case was removed upon a writ of error to the Supreme Court of the United States, and the decision is reported under the title of *Louisville & Nashville Co. vs. Central Stock Yards Co.*, 212 *U. S.*, 132.

The proceeding in the Federal Court dealt with interstate shipments and the bill in the State Court was prosecuted with reference to shipments *originating within the state.*

The decree of the State Court is summarized in the opinion of the Supreme Court as follows (p. 141):

> "The railroad company was ordered (1) *to receive at its stations in Kentucky, and 'to bill, transport, transfer, switch and deliver in the customary way,' at some point of physical connection with the tracks of the Southern Railway, and particularly at one described, all live stock or other freight consigned to the Central Stock Yards or to persons doing business there.* (2) It was ordered further, to transfer, switch and deliver to the Southern Railway at the said point of connection, 'any and all live stock or other freight coming over its lines in Kentucky' consigned to the Central Stock Yards or persons doing business there. (3) It was ordered further, to receive at the same point and to 'transfer, switch, transport and deliver all live stock' consigned to any one at the Bourbon Stock Yards 'the shipment of which originated at the Central Stock Yards;' with proviso requiring pay or tender of proper charges for its services, whenever demanded, at the time such live stock or other freight is offered. (4) Finally, the Railroad Company was required, whenever requested by the consignor, consignee, or owner of the stock 'at any of the stations, and particularly at its break-up yards in South Louisville, Kentucky,' to recognize their right to change the destination, and upon payment of the full Louisville freight rate and proper presentation of the bill of lading duly indorsed, the railroad was required to change the

destination and deliver at a point of connection with the Southern Railway tracks for delivery by the latter to the Central Stock Yards."

The State Court held that the Kentucky Constitution required the railroad company to deliver its own cars under the circumstances of the case to the Southern Railroad for delivery to the Central Stock Yards. It also declined to follow the decision of the United States Supreme Court that the two stock yards stood on the same footing as if they were the stations of two railroads placed side by side.

Commenting upon the decree of the State Court the United States Supreme Court said (p. 142):

> "When the live stock reached the point of connection or the break-up yards the carriage was not at an end, as appears by the very intent of the judgment, and as was decided in *McNeill vs. Southern Ry. Co.*, 202 *U. S.*, 543, 559."

(P. 143):

> "It was argued, * * * that the requirement that the plaintiff in error should deliver its own cars to another road was void under the Fourteenth Amendment as an unlawful taking of its property. In view of the well-known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transhipment or breaking bulk, in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described. The want cannot be cured by inserting them in judgments under it. The law itself must save the parties' rights, and not leave them to the discretion of the courts as such." (Citing cases.)

(P. 144):

> "It follows that the requirement of the state constitution cannot stand alone under the Fourteenth Amendment, and that the judgment in this respect also, being based upon it, must fall."

And:

> "We should add that the requirement in the first part of the judgment which we have been discussing, is open to the objections mentioned in the former decision so far as it practically requires the Louisville & Nashville Railroad to deliver cars at Louisville elsewhere than at its own terminus. 192 U. S., 570, 571."

(Pp. 144-145):

> "There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville & Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the services of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptances of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone."

In *Kentucky, etc., Bridge Co. vs. Louisville, etc., R. R.*, 37 *Fed. Rep.*, 567, it was claimed that under the charter of the railroad company which authorized other railroads to make connections with it the Bridge Company was entitled to an interchange, and on this point it was said (p. 620):

> "It is settled by the case of *Shelbyville R. Co. vs. L., etc., R. Co.*, 82 *Ky.*, 541, and *Atchison Co. vs. Denver, etc., Co.*, 110 *U. S.*, 681, that the connection thus

> authorized is a physical and not a business connection, requiring an interchange of traffic at the point of junction."

It was also claimed that such an interchange was required by the third section of the Interstate Commerce Act, and on this point (p. 621) it was said:

> "Neither this nor any other provision of the law requires of the common carrier of interstate commerce the duty of either forming new connections or of establishing new stations for the reception and delivery of freights. The act to regulate commerce deals with such common carriers as it finds them, and leaves to them full discretion as to what extensions they will make of their lines, the connections they may form, and the yards and depots they may choose to establish. When railroad companies, in compliance with their charter obligations, have provided themselves with convenient, suitable and ample stations and depots for the accommodation of their business, the law imposes upon them no duty, either to the public or other railroad lines, of making new stations, yards or depots, even though such additional constructions might be for the convenience of the public, or other carriers. Congress has certainly not undertaken, even if they possessed the power, to deal with such matters."

In *Oregon Short Line, etc., vs. Northern Pacific R. Co.*, 51 *Fed. Rep.*, 465, the case was heard before Justice Field of the Supreme Court sitting at Circuit. The Oregon Company was connected by means of the Portland Terminal Company with the tracks of the defendant. The Oregon Company sought to compel the defendant to receive freight in the Oregon Company's cars and to forward passengers to points destined on the lines of the defendant upon through tickets issued by the Oregon Company. Reliance was placed by the Oregon Company upon Section 3 of the Interstate Commerce Act, and also a clause in the charter of the Northern Pacific Company in language as follows (p. 475):

> "And it shall be the duty of the Northern Pacific Railway Co. to permit any other railroad which shall be authorized to be built by the United States, or by the Legislature of any territory or state in which the same may be situated, to form running connection with it, on fair and equitable terms."

It was also claimed that the defendant was required to make such interchange by reason of the customary methods among railroads.

On this point of custom it was said (p. 470):

> "There can be no usage founded in reason requiring the receiving company to transport the freight, in the cars which it is tendered, when its own cars are not in use. The receiving company is not under any obligation to allow its own cars to remain idle in order to transport those of another company; in such cases, that is, where it has sufficient cars for the purpose not in use, it may properly refuse to receive the freight unless it is transferred to them."

And also on page 742 it was said:

> "As the receiving company is under no obligation to take the freight in cars which it is tendered, and transport it, in such cars, when it has cars of its own, not in use, to transport it, there can be no custom that it shall pay the owner of such cars, should it receive them in such case, car mileage for their use."

On the effect of the provisions of the Interstate Commerce Act the Court followed the ruling in *Kentucky Bridge Company* case, above referred to, and concluded as follows (p. 474):

> "It follows from this, as it was decided in that case, that a common carrier is left to enter into arrangements for the use of its tracks or terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving undue or unreasonable preferences or advantages to such lines, or of unlawfully discriminating against other carriers. In making arrangements for such use by other companies, a common carrier will be governed by consideration of what is best for its own interests."

On the effect of the clause in defendant's charter the Court rule (p. 475):

> "The fifth section of the defendant's charter * * * does not impose any obligations upon the company to carry freight in the cars in which it may be tendered by a connecting line when its own cars are not in use, except where the transfer of the freight to another

would be injurious to it. In all other cases the receipt and transport of the freight tendered in foreign cars is a matter of conventional arrangement between it and the connecting company. The running connections which must be permitted by the defendant are not, as contended by complainant's counsel, a running over its line, but only in connection with it; a provision intended to secure the transportation and exchange of freight between connecting lines, and not the use of each other's road by the cars of such companies."

The opinion of Justice Field given in the above case was affirmed on appeal to the Circuit Court of Appeals under the title of *Oregon Short Line, etc. Co. vs. Northern Pacific R. Co.*, 61 *Fed. Rep.*, 158.

The following cases are also in point:

Atchison, etc. R. R. vs. Denver, etc. R. R., 110 *U. S.*, 667, 679, 680.

Chicago Northwestern Ry. Co. vs. Osborne, 52 *Fed. Rep.*, 912, 915.

Prescott vs. Atchison, etc. R. R. Co., 73 *Fed. Rep.*, 438, 439.

Little Rock, etc. vs. St. Louis, etc. Co., 41 *Fed. Rep.*, 559, 563.

Little Rock, etc. vs. East Tenn., etc. Co., 47 *Fed. Rep.*, 771, 781.

Little Rock, etc. vs. St. Louis, etc. Co., 59 *Fed. Rep.*, 400, 404, 406, 408, (*Affirmed by C. C. A.*, 63 *Fed. Rep.*, 775).

St. Louis Drayage vs. L. & N. R. R. Co., 65 *Fed. Rep.*, 39, 41.

Gulf, etc. R. Co. vs. Miami S. Co., 86 *Fed. Rep.*, 407, 416.

Ilwaco, etc. Co. vs Oregon, etc. Co., 57 *Fed. Rep.*, 673.

Express Company Cases, 117 *U. S.*, 1, 29.

In *Louisville & Nashville R. R. vs. West Coast Naval Stores Co.*, 198 *U. S.*, 483-497, the course of business was for the plaintiff to ship turpentine and rosin from its yards near Pensacola by means of a switch to the defendant's main line, and it demanded that the defendant then carry to its wharf in Pensacola and deliver to vessels designated by the West Coast Company other than vessels with whom the railroad company had agreements for through transportation. This the railroad company refused to do.

At page 497 the Court said:

> "Having the right, as the authorities prove, to decide what agencies it would employ for the purpose of transporting goods beyond its own line, and not being bound to enter into any contracts or arrangements with one person or carrier because it had so contracted or arranged with another, we think it follows that defendant was not obliged to permit the public to have access to its wharf, built for the purpose stated, simply because it granted such permission to those with whom it made arrangements of the kind set forth in the plea. While refusing to make any agreement with defendant for the further transportation of plaintiff's goods beyond Pensacola, plaintiff nevertheless claims a right to use the wharf erected by defendant for its own purpose, as already stated. This cannot be sustained. The principle stated in the above case is in substance recognized in Gulf, etc. Ry. Co. vs. Miami S. E. Co., 86 Fed. Rep., 407; Little Rock, etc., Ry. Co. vs. St. Louis, etc., Co., 63 Fed. Rep., 775, affirming same case, in 59 Fed. Rep., 400. The two last cases involved the construction of the Interstate Commerce Act, but they affirm the principle that a common carrier may agree with such other carrier as it may choose, to forward beyond its own line the goods which it had transported to its own terminus."

A railway cannot be compelled to deliver its cars to private sidings or spur tracks.

Mann vs. Pere Marquette R. R. Co., 135 *Mich.*, 210, 219.

McNeill vs. Southern Railway Co., 202 *U. S.*, 543, 561.

Central Stock Yards vs. L. & N. R. Co., 118 *Fed. Rep.*, 113, 116.

See citations from Stock Yards cases opinions in this court, supra.

IV.

THE ORDER OF THE MICHIGAN RAILROAD COMMISSION OF JUNE 5, 1908, IS INVALID FOR THE REASONS: (a) THAT IT IS FOUNDED UPON A LAW INVALID AS CONSTRUED BY SAID COMMISSION AND THE MICHIGAN SUPREME COURT; (b) THE ACTION OF THE COMMISSION WAS ARBITRARY AND UNREASONABLE: (c) IT DOES NOT UNDERTAKE TO PROVIDE A REASONABLE COMPENSATION TO THE PLAINTIFF IN ERROR FOR THE USE OF ITS CARS; FOR LOSS, DAMAGE TO, OR DETENTION OF THE CARS; FOR NEEDS OF THE PLAINTIFF IN ERROR WITH RESPECT TO SUCH CARS; OF FOR THEIR PROMPT RETURN.

That the law as construed by the Commission and the Michigan Supreme Court is invalid appears by the foregoing discussion.

On the original hearing before the Commission no finding was made by it with reference to the manner in which belt and terminal railroads are used. Yet without any testimony upon that subject, nor without definition of such usage, nor any attempt to fix compensation to the Michigan Central, it issued its command for what is in effect a through transportation service over a connecting line.

Even its order of March 2, 1910, does not indicate that the purpose of the inquiry was to determine the manner in which belt lines and terminal railroads are used (R., p. 45-46), although the examination was directed solely to that end.

No finding was made based on this testimony, nor was any further order made. In support of its application for a mandamus before the Supreme Court the Railroad Commission made as a part of its case the transcript of the record on that hearing (Exhibit "F," R. 19, 38).

The purpose and intent of the order of the Commission of June 5, 1908, was to compel a through service from Oxford to Flint, a distance of 28 miles, thus serving three separate village communities other than the terminal points just mentioned. This is apparent on the face of the opinion of the Commission, and is clearly stated in the prayer of its petition for a mandamus (R. 5).

The testimony presented at the hearing of March 2, 1910,

demonstrates conclusively that belt lines and terminal railroads are used for local purposes only, confined to a single city and its environs. The Commission therefore in making the order which it did, requiring as their opinion intended, a service beyond a terminal delivery, and extended to distinct and distant small agricultural villages, acted arbitrarily and without evidence. While the forms of law may have been complied with the judgment reached is without foundation, and as a compliance with its order requires the expenditure of money and the uses of property it operates as a taking of property without due process of law.

Oregon Co. vs. Fairchild, 224 *U. S.*, 510, 523-524, 530-532.
U. S. vs. B. & O. Southwestern Co., 226 *U. S.*, 14, 20.

That the Commission in making its original order acted in part upon its own private investigation is admitted in its opinion filed (R. 15). So far as the order can be said to be based upon such information it is invalid. This is ruled by the cases last cited.

The burden was upon the Commission to establish the validity of its order in the mandamus proceeding. As the conceded facts show that a service by belt line and terminal companies, would not include the service required by the order of June 5, 1908, the order of the Commission, and the judgment of the Supreme Court are not supported by any evidence in the case, and thus violate the Federal Constitution. This also is ruled by the cases last cited.

That the Commission has taken no proceeding to fix and determine in any degree, compensation to the plaintiff in error for its services or the use of its property; or to provide any of the other rules necessary to a valid enactment or valid action on its part, is conceded. This weakness is commented on by Mr. Justice Ostrander of the Michigan Supreme Court in his concurring opinion (R. 53). In any view of the case until this is done there can be no valid order by the Michigan Railroad Commission.

That the *use* of property is a *taking* in a constitutional sense is not open to question in the State of Michigan.

Grand Rapids Booming Co. vs. Jarvis, 30 *Mich.*, 308, 320, 321.

Irrespective of any written constitutional provision, it is a

rule well and long established that the owner is entitled to his compensation before entry upon, or the use, or taking, of his property; or at least that this compensation will be secured to him.

It is not enough that plaintiff in error be turned over to its action at law for its remedy to obtain compensation, nor can it be required to accept anything other than a present adequate fund which is placed under its control and demand at substantially the time of the taking of the property.

Lewis on Eminent Domain, Vol. 2, 3rd Ed. Sec. 680.
Waterbury vs. Platt Bros. & Co., 76 *Conn.*, 435, 440.
Bloodgood vs. Mohawk, etc. R. R., 18 *Wendell*, 218.
Attorney General vs. Old Colony, etc. R. R., 160 *Mass.*, 62, 90-92, 93.

V.

SECTION 7, (b) OF THE ACT OF 1909 AS CONSTRUED BY THE RAILROAD COMMISSION AND THE SUPREME COURT AND THE ORDERS MADE IN PURSUANCE THEREOF OPERATE AS A BURDEN UPON AND INTERFERENCE WITH INTERSTATE COMMERCE.

The road of the plaintiff in error, including that portion passing through Oxford, is one of the great systems in the middle west engaged in interstate commerce (R. 38, 39).

In the conduct of such commerce it has in its possession at all times a large number of cars belonging to other interstate roads with which it connects under arrangements which are mutually satisfactory (R. 44; testimony Mr. Brown, R. 34-35, 36-37). The Detroit United Railway is wholly without freight equipment of the sort used upon steam railroads (R. 41; testimony Mr. Brown, pp. 25, 33).

The statute as construed by the Supreme Court and the Commission, and as well the order in pursuance thereof, is a bald command that without regard to the demands of interstate commerce the Michigan Central turn over to a connecting street railway its equipment for use on the line of the latter and for a service that the Michigan Central is not bound under the law to perform. These cars are to be delivered at all times and under all circumstances and without reference to needs and demands of interstate commerce.

The statute as thus construed and the proceeding under it is, therefore, invalid on two grounds: (a) requiring a delivery of cars off of the line of the Michigan Central Company; (b) a delivery of such cars under all circumstances and without excuse and without reference to the demands of interstate commerce.

McNeill vs. Southern Ry. Co., 202 *U. S.*, 543, 561.
Chicago, etc. Ry. Co. vs. Hardwick Elevator Co., 226 *U. S.*, 426, 433-435.
St. Louis S. W. Ry. vs. Ark., 217 *U. S.*, 136, 149-150.
Houston, etc. R. vs. Mayes, 201 *U. S.*, 321, 328-331.

It is respectfully submitted that the judgment of the Supreme Court of the State of Michigan should be reversed and held for naught.

FRANK E. ROBSON,
Attorney for Plaintiff in Error.

HENRY RUSSEL,
Of Counsel.

APPENDIX A.

STREET RAILWAY ACT.

Sec. 13. Any street railway corporation organized under the provisions of this act, may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations, and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use maintain and own a street railway for the transportation of passengers, in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road, in and along the streets or highways of any township adjacent to said city or village, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk, in the records of his township. Any company organized under the provisions of this act may construct, use, maintain and own a street railway for the transportation of passengers, in and along the streets and highways of any township, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township.

Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred.

Sec. 17. In constructing their railways, every such company shall conform to the grades established, or which may be established, by the common council or other corporate au-

thorities of the city, village or township, for the street traversed by said railways, nor shall the company at any time alter or change the grade or line of any street, without the consent of the common council or other corporate authorities of the city, village or township, first had and obtained.

Sec. 18. Every street railway company is hereby required to lay the track of their road or railway in such way or mode and with such kind of rail, and to keep their railway and that part of the street and pavement within and adjacent to the track of such road or railway, in such condition and state of repair as shall be prescribed and provided in the consent, grant or agreement, of the municipal authorities permitting the construction and location of such road or railway.

Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities.

Sec. 32. Street railway companies shall require the drivers of street cars to bring such street cars to a full stop before going upon a street railway crossing of the tracks of a steam railroad, and to make sure that no engine or cars are approaching such crossing before he proceeds to go upon the same. If the driver of any street car shall neglect to bring such car to a stop, as hereinbefore provided, he shall for every such neglect be liable to a fine of twenty-five dollars.

Sec. 34. Corporations organized under this act may do a suburban express business and may carry farm produce, garden truck, milk, merchandise and other light freight; Provided, That no cars for the conduct of any such business shall be operated on any street railway within the limits of any incorporated city or village in the day time, between eight o'clock in the morning and eight o'clock in the evening, without the consent of the municipal authorities, and under such rules and regulations as they may prescribe.

APPENDIX B.

RAILROAD COMMISSION ACT.

Sec. 3. (c) The term "railroad" as used in this act shall be construed to mean all railroads, whether operated by steam, electric or other motive power; Provided, That the provision of this act shall not apply to any logging or other private railroad not doing business as a common carrier; Provided further, Nothing in this act contained shall be construed to authorized the commission to interfere with, lessen or impair or to authorize the impairment of any franchise provision, contract or agreement as to rate of fare now existing between any municipality, city, village, or township and any tram railway, street railway, interurban or suburban railway company, or to increase or lessen the rate of fare fixed by such franchise, contract or agreement, or to deprive any tram railway, street railway, interurban or suburban railway company of the right to charge for the carriage of passengers the rate of fare authorized and fixed by any franchise, grant or contract made or entered into between any municipality, city, village or township and any such tram railway, street railway, interurban or suburban railway company; Provided, further, That nothing in this act contained shall apply to street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of five miles of the boundaries thereof."

Sec. 4. (b) All railroads incorporated under the general railroad law of this state, as between themselves, and all *electric railroads,* as between themselves, shall establish through routes and just and reasonable rates applicable thereto, except as hereinafter provided.

Sec. 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or any connecting line, and shall not

discriminate in their rates and charges between such connecting lines; Provided, Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to any other railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper. When freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination.

Sec. 7. (b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks, or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose may require the construction of physical connection upon such terms as it may determine; Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes.

Sec. 7. (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks; Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law, and otherwise safe for trans-

portation and properly loaded; Provided further, If the corporation cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised.

Sec. 22. (e) The commission may, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and the terms and conditions under which such through routes shall be operated when the common carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates; Provided, No reasonably satisfactory through routes and joint rate exist. Whenever the common carrier or common carriers, in obedience to an order of the commission or otherwise in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate, fare or charge to be received by each common carrier party thereto, which order shall take effect as part of the original order.

Sec. 35. Whenever, in the opinion of the Michigan railroad commission, the safety of the public reasonably demands the stationing of a flagman to signal trains or cars where a highway or street is crossed by any *railroad or street railway,* or where one railroad or street railway crosses or intersects another railroad or street railway, or the building of a gate at such highway, street or railroad crossing or intersection, or street crossing, or the erection and maintenance of an electric alarm bell thereat, it shall direct the corporation or corporations owning or operating any such railroad, railroads, or street railway or street railways, to station a flagman or to erect and maintain a gate or electric alarm bell at such crossing as the public safety may demand, and said commission shall have jurisdiction over the subject matter of this section to the exclusion of all other boards or officers, state or municipal, and in case such flagman is directed to be stationed, or gate directed to be erected, or alarm to be installed and maintained where one such railroad crosses or intersects another,

the expense thereof shall be borne jointly, in just proportions as determined by the railroad commission, by the companies owning or controlling each of said *railroads* or *electric railways*.

Sec. 44. The police powers of the state over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this state, shall be and the same are hereby vested in the railroad commission, and it is hereby made the duty of said railroad commission to exercise the same in accordance with the requirements of the law.

APPENDIX C.

CONSTITUTIONAL PROVISIONS.

Sec. 19. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Sec. 28. No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such duty, village or township; nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1914.

No. 91

THE MICHIGAN CENTRAL RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE MICHIGAN RAILROAD COMMISSION,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

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STATEMENT OF FACTS.

This case involves the question of the right of a State to make and enforce a statute investing an administrative Board thereof with the authority to require common carriers operating lines of railway within such State to form physical connections and to interchange cars and carload shipments of freight for the purpose of facilitating intra-state commerce. Act 312 of the Public Acts of Michigan for the year 1907 created the Michigan Railroad Commission and conferred upon it certain powers and duties designed to prevent the im-

position of unjust rates and charges, with the affirmative authority to direct railroad companies to take such action in certain cases as might be deemed to be necessary and expedient to protect the rights of shippers of freight. The measure was entitled, "An Act to regulate railroads and the transportation of persons and property in this State, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and to prescribe penalties for violations thereof." Subdivisions B and C of section 7 of said Act dealt with the establishment of physical connections and the interchange of cars. While these provisions are found in the act creating the Michigan Railroad Commission and as they here appear give certain power to the Railroad Commission similar provisions had been upon the statutes for a great many years requiring the hauling of freight of intersecting roads.

Section 28, Article II of Act 198, Public Acts 1873.

In the State court the case involves construction, application and validity of the provisions of said subdivisions B and C. The State court determined the construction and application of these subdivisions and also determined the validity of them as against the claim that they infringed certain provisions of the federal constitution. It is not claimed by the plaintiff in error here that these two subdivisions are invalid because repugnant to certain provisions of the federal constitution. Inasmuch as the sole point at issue in this case turns upon the validity of these provisions we deem it expedient to set them forth in this statement. They read as follows:

> "(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the Commission

may, upon the application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine. Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper guage, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised."

The enactment of 1907 was superseded by Act No. 300 of the Public Acts of 1909. The provisions above quoted were re-enacted in a subsequent measure, so that insofar as this case is concerned no question arises of the superseding of the earlier statute after the proceedings in this case were first instituted.

The facts in the case present no unusual aspects. The case is the ordinary case of physical connection of tracks of intersecting railroad companies. The plaintiff in error, the Michigan Central Railroad Company was in 1908, and is at the present time operating as lessee a line of railway within the State of Michigan extending from the City of Detroit to Bay City and known as the Detroit & Bay City Division. This road passes through the village of Oxford, a small village in Oakland county but does not pass through the City of Flint. Passing through the village of Oxford and crossing the Detroit & Bay City Division of the Michigan Central is an interurban electric line operated by the Detroit United Railway Company, a corporation organized under the street railway act of the State of Michigan. This line of the Detroit United extends from the City of Detroit to the City of Flint in Genesee County. Located on this line was several small villages, among others Ortonville, Goodrich and Atlas. These villages have no railroad facilities of any kind except such as is given them by this interurban line. Ortonville has a population of 351 and is located in a well settled country, the township in which it is located having a population of 1,161. Goodrich is a village located in Atlas township, the township having a population of 1,176. Ortonville is ten miles from Oxford and eighteen miles from Flint. Goodrich is sixteen miles from Oxford and is twelve miles from Flint. Although these two roads intersect, up to the present time all of the freight shipped to these small villages is transferred at Oxford from the steam railway cars to smaller cars of the Detroit United. This unloading from

one car into the other made an expense to the shipper of $3.00 per car to which of course must be added any demurrage charges that may accrue. Davidson is a point on the Grand Trunk Western and is eight miles from Goodrich. Grand Blanc is a point on the Pere Marquette and is about eight miles from Goodrich. Stock shipments from this locality could not be made upon the Detroit United and must be made from one or the other of these points (neither of which was on the line of the Michigan Central Railway). By reason of the inability to ship in carload shipments, the price of hay at Ortonville was fifty cents per ton less than at Grand Blanc, while coal at Ortonville was fifty cents more per ton than at Oxford. These differences in prices being caused by the expense incurred in transferring the shipments from one car to the other at Oxford. This condition having existed for some time, petitions were presented to the defendant in error the Michigan Railroad Commission by interested citizens asking that a physical connection be established at the village of Oxford between the Michigan Central Railroad Company and the Detroit United Railway. (Record, pages 6-8.) It should be said by way of explanation and in order to avoid confusion that at about the same time the petitions involved in this case were filed, that other petitions were filed for the purpose of having physical connections made at Flint between the Detroit United Railway Company and the Grand Trunk Western. Both cases were heard together by the Commission and one order was made covering the two cases. However, the question of physical connection at Flint is not involved in this proceeding, the connection at Oxford between the Detroit United Railway Company and the Michigan Central Railroad Company being the only one here involved.

On April 28th, 1908, after due notice to the railroad companies, a hearing was had upon the application for the establishment of physical connection at Oxford, plaintiff in error

being represented and the matter was fully gone into, quite a number of witnesses being sworn and the Commission going over the ground in person. The testimony established that the making of a physical connection between the roads and the interchange of cars and carload shipments of freight would be practicable and reasonable under the circumstances; and it was not only shown to be reasonable under the circumstances but extremely desirable for all parties concerned. It was not shown that there was any valid subsisting reasons to prevent such action being taken, and on the 5th day of June, 1908, the Commission filed an opinion in said cause, and upon the same day entered an order requiring the establishment of such physical connection and requiring the expense to be borne equally by the Detroit United Railway Company and the Michigan Central Railroad Company. This order is found on page 17 of the record. The Commission found as a matter of fact that the steam roads would be the beneficiaries of this physical connection. We quote from the findings of the Commission found on page 15 of the record:

> "As to defendant Michigan Central Railroad Company, small sacrifice is asked in order to secure to these people the benefits they ask. It will have to expend its proportion of the amount necessary to install the connection, but no further expenditure is involved for it. Were the contemplated elevator at Goodrich one to be established at Oxford on the line of the Michigan Central, or at Flint on the 'cut off' of the Grand Trunk, sidetrack facilities would be provided for it by that company, in view of the business to be derived. The business to be derived by the steam railroad company from Ortonville, Goodrich and surrounding country, via these connections and the Detroit United Railway gives promise of being considerable in

amount. Thereby it is believed the Michigan Central Railroad Company and the Grand Trunk Western Railway Company will be the beneficiaries by such connections."

It will be noted from the order that the companies were left to connect their tracks at such points that they should agree upon among themselves and that thereafter they should interchange cars, carload shipments, less than carload shipments and passenger traffic in accordance with the provisions of section 7 of the Railroad Commission Act which have heretofore been set forth. The companies having failed to agree upon the point of connection, on the 28th day of November, 1908, the Commission designated the point and extended the time for installation to December 11th. (Record, page 18.)

Section 26 of Act 312 of the Public Acts of 1907, (The Michigan Railroad Commission Act) makes provision for an appeal from the order of the Michigan Railroad Commission. Neither the plaintiff in error nor the Detroit United Railway Company saw fit to avail themselves of this remedy, the latter company indicating its willingness to carry out the orders of the Commission and to interchange cars and shipments of freight with plaintiff in the manner directed by the Commission. Subsequently the physical connection was made, the same being made however under protest of the plaintiff in error, the balance of the order (viz.: the interchange of cars, carload shipments, etc.) not being complied with. Thereupon the Michigan Railroad Commission applied to the Supreme Court of the State for mandamus to compel the enforcement of the order, that being the appropriate remedy. Three questions were submitted to and determined by the State court. They were—

1st. Whether the act was in conflict with the commerce clause of the federal constitution. This was answered in the negative upon the theory that the order was limited and applied only to intra-state shipments.

2nd. Whether the statute under consideration deprived the companies of their property without just compensation. This was answered in the negative, the court construing subdivision (c) of section 7 of the statute as being applicable and a part of subdivision (b), and that it expressly provided for compensation.

3rd. A question of practice whether the plaintiff in error having failed to appeal from the decision of the Commission could raise the question of the practicability and reasonableness of the physical connection on mandamus. This question was also answered in the negative by the court.

The opinion of the court is found at pages 48 to 53 of the record and is reported as Michigan Railroad Commission v. Michigan Central Railroad Company, 168 Mich. 230. Pursuant to the opinion the following order was entered:

> "This matter having been heard upon the petition of the relator, the answer of respondent, and the briefs of counsel for the respective parties; the Court having duly considered the matter, and it appearing to the Court that as to so much of the order of Relator of June 5th, A. D. 1908, in a matter then pending before said relator, wherein Sweers & Wilder, Guy N. Hart, H. A. Profrock, were complainant and Detroit United Railway, and the Michigan Central Railroad Company were defendants, wherein the said defendants were required to connect their tracks at the village of Oxford, Oakland County, has been complied with by said defendants; and it further appearing that the said respondent herein not having shown sufficient cause why the remaining and other portions of said order should not be complied with by it,
>
> It is ordered that a preemptory writ of mandamus issue out of and under the seal of this court, directing the said respondent to forthwith, at the point of said

physical connection between its tracks and the tracks of the said Detroit United Railway in the village of Oxford, Oakland County, Michigan, so far as same relates to intra-state traffic, interchange cars, carload shipments, less than carload shipments and passenger traffic, in accordance with the provisions of subdivision (b) of section 7 of Act 312 of the Public Acts of the State of Michigan of 1907, and as re-enacted and contained in subdivision (b) of section 7 of Act 300 of the Public Acts of the State of Michigan of 1909, and in accordance with the order of the relator of June 5th, A. D. 1908."

Thereupon the Michigan Central Railroad Company sued out this writ of error to the Supreme Court of the State of Michigan alleging in the petition for its writ that the statute involved and the order of the Michigan Railroad Commission made thereunder was repugnant to the 14th Amendment to the federal constitution in that the same would deprive the plaintiff in error of its porperty without due process of law. It is also suggested by plaintiff in error that the Michigan statute is an attempted regulation of interstate commerce and repugnant to the third clause of section 8 of article 1 of the Constitution of the United States. It will therefore be noted that the question of power of the State is the whole question that is involved in this proceeding. The question of propriety of the order made by the Railroad Commission or of its reasonableness not being involved in this character of proceeding, viz.: mandamus.

ARGUMENT.

As suggested at the outset the primary question involved in this case arises under the 14th amendment to the Constitution of the United States: Are the Michigan statute and the Order of the Michigan Railroad Commission made pursuant thereto repugnant to that amendment on the ground that they operate to deprive plaintiff in error of its property without due process of law? It will be noted that the Order of the State Supreme Court refers in specific terms to intrastate commerce. It can have no bearing therefore on interstate commerce and we fail to see any legitimate foundation whatever for the suggestion made in the petition for the writ of error that the commerce clause of the Federal Constitution is violated. The State Supreme Court has construed the statute as limiting the jurisdiction of the defendant in error, the Michigan Railroad Commission, to intrastate traffic (R. 52). No attempt has been made in this case, and we do not understand that plaintiff in error claims that there has been such, to in any way interfere with or regulate commerce carried on between states. The holding of the State Court has foreclosed any argument upon this proposition here. We assume that in recognition of the established rule the construction and interpretation placed upon the Act of the Legislature of the State of Michigan by the highest tribunal of the State will be adopted by this Court. This proposition was passed upon squarely in the case of

Smiley vs. Kansas, 196 U. S. 447;

where it was said (R. 8):

> "It is well settled that in cases of this kind the interpretation placed by the highest court of the State upon its statutes is conclusive here. We accept the construction given to a state statute by that court.

St. L., I. M. & St. P. Ry. Co. v. Paul, 173 U. S. 404, 408; M., K. & T. Ry. Co. v. McCann, 174 U. S. 580, 586; Tullis v. L. E. & W. R. R. Co., 175 U. S. 348. Nor is it material that the state court ascertains the meaning and scope of the statute as well as its validity by pursuing a different rule of construction from what we recognize. It may be that the views of the Kansas court in respect to this matter are not in harmony with those expressed by us in United States v. Reese, 92 U. S. 214; Trade-Mark Cases, 100 U. S. 82; United States v. Harris, 106 U. S. 629, and Baldwin v. Franks, 120 U. S. 678. We shall not stop to consider that question nor the reconciliation of the supposed conflicting views suggested by the Chief Justice of the State. The power to determine the meaning of a statute carries with it the power to prescribe its extent and limitations as well as the method by which they shall be determined."

Likewise, in the earlier case of

Noble vs. Mitchell, 164 U. S. 367;

in which the Court was asked to review the construction placed upon a State statute by the Supreme Court, the same proposition was declared. We call attention also to the following cases which bear upon the same point:

Tulluride Power Co. vs. Rio Grande Co., 187 U. S. 569, 584;
Dibble vs. Land Co., 163 U. S. 63;
Union Bank vs. Louisville Ry. Co., 163 U. S. 325;
Gardner vs. Bonestell, 180 U. S. 262, 290.

We believe that these prior decisions of this Court will prove a sufficient answer to any argument that may be ad-

vanced on behalf of plaintiff in error relative to the construction and application of the statutory provisions involved.

As stated, it has been declared by the Court of last resort of the State of Michigan that the enactment did not attempt to confer upon the Michigan Railroad Commission any authority whatever with reference to interstate commerce and the order of that Court, which is now complained of, is limited in specific terms to intra-state traffic. The same considerations must prevail with reference to the proposition as to whether or not the Michigan Railroad Commission, the deendant in error here, erred in determining that the statute applied to the instant case and was broad enough in terms to justiy the order made commanding the Michigan Central Railroad Company and the Detroit United Railway Company to establish a physical connection at the village of Oxford and to interchange cars and carload shipments of freight at that point. The State Supreme Court has given such construction its stamp of approval, and it is respectfully submitted that we are bound thereby in the determination of the questions suggested by plaintiff in error's petition for the writ.

This brings us to a consideration of the vital point at issue, that is, the objections urged on behalf of plaintiff in error under the 14th amendment to the Constitution of the United States. In this connection we desire to call the attention of the Court at the outset to the fact that the Michigan statute makes provision for the payment of compensation in proper cases in proceedings taken thereunder. We are not dealing therefore with a measure seeking to authorize the confiscation of property without just compensation therefor. The authorities cited and relied upon by plaintiff in error in the State Court, and which will undoubtedly be invoked here in its behalf, are distinguishable upon this point. It is true that in this case no compensation was in fact awarded for the making of the actual physical connection because it was

found by the Michigan Railroad Commission that both the plaintiff in error and the Detroit United Railway would be actually benefited by the establishment of the physical connection between the two and the interchange of cars and shipments of freight at the village of Oxford. This matter was gone into quite fully at the hearing before the Commission and not only did plaintiff in error fail to indicate a single particular where injury might result to it but rather the contrary inference seems to be unavoidable. With the facts before it the Commission could scarcely award any compensation for the making of the actual physical connection to either the plaintiff in error or the Interurban Railway. If either felt aggrieved in this particular the statute pointed out a method by which a proceeding might have been had in Court to review the action of the Commission. Neither saw fit, however, to take advantage of the remedy offered and by their acquiescence we submit that they must be deemed to have recognized the correctness of the findings of fact made by the Commission. In fact the Detroit United Railway Company is making no attempt to avoid the performance of the obligation placed upon it. Plaintiff in error alone professes to be aggrieved. It impliedly recognized the validity of a part of the order made by the Michigan Railroad Commission by establishing physical connection as required but the remedy that is necessary in case shippers in the territory affected are to secure the relief contemplated by the Michigan Statute is withheld. If a State can not exercise the measure of control over intrastate traffic contemplated by the Michigan statute here involved, then it is obvious that adequate protection can not be given to intrastate shippers. Rather, they are at the mercy of common carriers, especially, as in this case, where they are dependent upon a single line of railway. The question is obviously one of vital importance dealing as it does with the power of a state to pass measures that present conditions of traffic render absolutely imperative.

We believe that the considerations that must prevail here in the determination of the instant case have been so thoroughly covered in recent decisions of this Court that it is unnecessary to dwell at any considerable length upon them. We desire to call attention to certain of these cases in which the proposition has been thoroughly covered and the authority of a State to adopt and enforce statutes of the character in question has been upheld.

> Chicago, Milwaukee & St. Paul Ry. Co. vs. State of Iowa, 34 Sup. Ct. Rep. 592;

would, standing alone, seem to be decisive. In this case the plaintiff in error had refused to accept carloads of coal from other carriers when placed upon the interchange track in the City of Davenport. Thereupon, as in this case, a petition was presented to the State Railroad Commission, a hearing was had thereby, and the interchange of cars was ordered. There, as in this case, the Railroad Company refused to comply and it was found necessary to enforce obedience in an appropriate proceeding under the Iowa statute. The Supreme Court of the State upheld the validity of the order (152 Iowa 317) and the matter was brought before this Court in the usual way. After disposing of the contention that the statute was not applicable to the case by calling attention to the rule hereinbefore referred to, that the decision of the Court of last resort of the State as to the construction and interpretation of the Statute is binding, this Court said, speaking through Mr. Justice Hughes:

> "Further, the plaintiff in error insists that the enforcement of the order would deprive it of its liberty to contract, and of its property, without due process of law, and would deny to it the equal protection of the laws, in violation of the 14th Amendment. We find

these objections to be without merit. It was competent for the state, acting within its jurisdiction, and not in hostility to any Federal regulation of interstate commerce, to compel the carrier to accept cars which were already loaded and in suitable condition for transportation over its line. The requirement was a reasonable one. It cannot be said that the plaintiff in error had a constitutional right to burden trade by insisting that the commodities should be unloaded and reloaded in its own equipment. Upon this point the case of Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, is decisive. There is no essential difference, so far as the power of the state is concerned, between such an order as we have here and one compelling the carrier to make track connections, and to receive cars from connecting roads, in order that reasonably adequate facilities for traffic may be provided. See also Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 263, 46 L. ed. 1151, 1156, 22 Sup. Ct. Rep. 900; Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 19, 27, 51 L. ed. 933, 941, 945, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398; Missouri P. R. Co. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330; Grand Trunk R. Co. v. Michigan Railroad Commission, 231 U. S. 457, 468, ante 152, 34 Sup. Ct. Rep. 152.

It is argued that it was unreasonable to subject the railway company to the expense incident to the use of the cars of another carrier when it was ready to furnish its own. The record affords no sufficient bases for this contention. What the expense referred to would be was not proved, and, in the absence of a suitable disclosure of the pertinent facts, no case was made which would justify the conclusion that, in its practical operation, the regulation would impose any

unreasonable burden. On the other hand, the agreed statement makes it evident that prior to the change which gave rise to this controversy it was the practice of the company to accept such shipments.

Finally, it is said that the order of the Commission interferes with interstate commerce because the cars in question were the vehicles of that commerce, and were brought into the state as such. No question, however, is presented here as between the shippers and the owners of the cars, and no actual interference with interstate commerce is shown. Nor does it appear that any regulation under Federal authority has been violated.

The plaintiff in error has failed to establish any ground for invalidating the order of the Commission and the judgment of the Commission and the judgment must be affirmed."

This case seems to be squarely on all fours with the case at bar and for that reason certain language used by the Supreme Court of Iowa, found on page 322 of the State report, is of interest. It was there said, in part:

"The Legislature in the statute just quoted evidently recognized the long-continued custom of railroads of receiving the cars of other roads for the transportation of freight over their own roads without breaking bulk. It is a custom so general as to be within the knowledge of all men, and it has been practiced so long that the courts will take judicial notice of it. Burlington, C. R. & N. Ry. Co. v. Dey, 82 Iowa, 312. Under the authority of section 2153, the owner or consignor of freight for shipment from one point to another within the state may require the carrier to transport it without change of cars. We can see no reason why the

same requirement should not be held proper under the facts presented here, and we believe that the Legislature intended to and did clothe the board with the power to make such a requirement when deemed reasonable and expedient for the convenience and accommodation of the shipper. The fact that section 2116 refers only to cars of connecting roads is not very significant in view of the general powers conferred by sections 2112 and 2113. It probably never occurred to the members of the Legislature that a railroad company would refuse to accept freight in carload lots unless loaded in it own cars. An examination of almost any freight train on any road in the United States would furnish a sufficient reason for a contrary conclusion."

This decision followed the holding of the Court in the prior case of

Wisconsin, Minnesota and Pacific Railroad vs. Jacobson, 179 U. S. 287;

In this case a statute of the State of Minnesota was involved by which the State Railroad Commission was given authority to require the establishment of physical connections where practicable and necessary for the interests of traffic. In affirming the decision of the State Court upholding the validity of the enactment the Court said, in part, beginning on page 295:

"Plaintiff in error urged that transporting cattle from Minnesota to Iowa constitutes interstate commerce, and that neither the State of Minnesota nor its railroad commission has the right to in any manner interfere with or regulate such commerce. The judgment in this case, however, neither regulates nor interferes

with that commerce, nor does that part of the statute upon which the judgment is founded. Whether any other portion of the statute does regulate such commerce is beside the question, and it is not necessary to here decide. To provide at the place of intersection of these two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of property and cars to and from their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any, and would in no wise regulate such commerce within the meaning of the Constitution. That is all that has been done by the judgment under review. A State may furnish such facilities or direct them to be furnished by persons or Corporations within its limits without violating the Federal Constitution. But the Supreme Court of the State, in the opinion delivered therein, said that there was ample evidence in the case of a necessity for such track connection resulting from the benefit which would accrue to exclusively state commerce when considered alone, to justify the ordering of the connection in question. * * * *

Adhering strictly to the question involved in this case, namely, the validity or the invalidity of the judgment actually rendered, we are met by the objection of the plaintiff in error that the judgment itself is necessarily and inherently illegal, because upon the conceded facts, if the judgment be enforced, it can only result in taking the property of the plaintiff in error without

due process of law, and in refusing it the equal protection of the laws and in depriving it of its liberty to contract with such persons or corporations as it may choose. We think not one of these objections in tenable.

At common law the courts would be without power to make such an order as was made in this case by the State court. Legislative authority would be necessary in order to give power to the courts to render a judgment of this kind. If power were granted by the legislature, and it amounted in the particular case simply to a fair, reasonable and appropriate regulation of the interests both of the company and of the public, the legislation would be valid, and would furnish, therefore, ample authority for the courts to enforce it. Atchison etc. Railroad Company v. Denver etc. Railroad Company, 110 U. S. 667, 681; People ex rel etc. v. Boston & Albany Railroad Company, 70 N. Y. 569; People v. Railroad Company, 104 N. Y. 58.

Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper manner the conduct and business of railroad corporations have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. Olcott v. Supervisors, 16 Wall. 678, 694; Cherokee Nation v. Southern Kansas Railroad Company, 135 U. S. 641; United States v. Joint Traffic Association, 171 id. 505-569, 570; Lake Shore Railway Company v. Ohio, 173 id. 285, 301. * * *

Although to carry out the judgment may require the exercise by the plaintiff in error of the power of emi-

ment domain, and will also result in some, comparatively speaking, small expense, yet neither fact furnishes an answer to the application of defendant in error. Mayor etc. v. Northwestern Railway, 109 Mass. 112; People v. Railroad, 58 N. Y. 152, 163, People v. Boston etc. Railroad Company, 70 N. Y. 569; People v. Railroad Company, 104 N. Y. 58, 67."

The decision of the Minnesota Court is reported under the title of

Jacobson vs. Wisconsin, Minnesota & Pacific Railroad Co., 71 Minn. 519;

In view of plaintiff in error's contention advanced in the State Court to the effect that the Detroit United Railway is without authority to interchange cars, we desire to call the attention of the Court to certain language, found on page 531, where it was said, in part:

"It is contended that, even if the connections were made, neither railway company should be compelled to deliver its loaded cars to the other, to be carried with their contents to their destination over the road of such other; that to compel appellant to deliver up its cars to be carried away from the line of its road to distant points would be in violation of its charter contract, and unconstitutional; that, for this reason, it is useless to compel the making of the connection in question, and therefore the legislative act fails of its purpose, and is unconstitutional and void.

Such interchange of cars between different railroads is a common and also universal practice; yet there are few railroad charters which expressly authorize this practice. It would hardly be contended that such an act of interchange is ultra vires on the part of a rail-

road company whose charter is silent as to such authority. As incidental to the operation of its road, a railroad company has the power to interchange cars with other connecting companies, and this is the ordinary and usual way of doing business. We are clearly of the opinion that the legislature has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars as incidental to the business for which the company was chartered." (Citing authorities.)

It is respectfully submitted, however, that the Michigan Central Railroad Company is not in position to raise the question as to the limitation of authority of the Detroit United. The latter Company has not seen fit to urge any objection, evidently feeling assured that there is no merit therein. In any event such a defense can scarcely be deemed to be available to others. The language of the Minnesota Court is, however, pertinent as indicating the attitude of the Courts generally towards the question of the establishment of physical connections and the interchange of cars at the order of a proper administrative Board of officers after such a proceeding as amply safe-guards the rights of all parties concerned.

Plaintiff in error relied in the State Court upon the cases of

Central Stockyards Company vs. Louisville & Nashville Railway Company, 192 U. S. 568;
Louisville & Nashville Railroad Co. vs. Central Stockyards Co., 212 U. S. 132.

The first of these two cases came before this Court on appeal from a decree of the Circuit Court of Appeals and turned upon the construction to be given to certain provisions

of the Constitution of Kentucky which were claimed to require railroad companies appearing in that State to receive, deliver and transfer freight from and to any point of physical connection between tracks. It was held that the defendant was not within the terms of the provision. In view of the construction given no constitutional question was passed upon. Subsequently the matter came up again on a writ of error to the Court of Appeals of the State of Kentucky. It appears that the State Court refused to follow the construction laid down by this Court, decided that the plaintiff in error was within the terms of the provisions of the State Constitution and made its decree accordingly. The question was therefore presented squarely as to the validity of the clause of the State Constitution involved under the Federal Constitution. No provision or compensation was made in such clause and the case turned wholly upon this omission, it being held that, as construed by the Kentucky Court of last resort, property might be taken "without just compensation." In the opinion of the majority of the Court we find the following significant language:

> "It was argued that the requirement that the plaintiff in error should deliver its own cars to another road was void under the 14th Amendment as an unlawful taking of its property. In view of the well known and necessary practice of connecting roads we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless trans-shipment or breaking bulk in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question."

The majority of the Court were of the opinion that failure to provide for compensation in proper cases was fatal and

that the Courts could not read into the section the necessary saving clause.

It is respectfully submitted that the decisions in the two cases cited arising under the Kentucky Constitution are not in point in the instant case for the reason that in neither the Kentucky Constitution or any statute of the State of Kentucky was there provision made for compensation, while in the instant case, the Michigan statute expressly provides for compensation, and expressly provides a method of arriving at such compensation. The companies themselves are first to agree and if they are unable to agree, the Commission fixes what the compensation shall be. In other words, the very thing which was absent in the Kentucky case is present in the instant case. Both compensation and the method of determining that compensation are provided for in the Michigan statute. Therefore, we believe that the Jacobson case and the other cases cited by us are controlling, and that the Kentucky cases are not in point. Indeed, it seems to us that this court has already foreclosed this question so far as the Michigan statute is concerned and has determined its validity in the case of

> Grand Trunk Railway Company vs. Michigan Railroad Commission, 231 U. S. 479;

and as pointed out very clearly, the same distinction which exists between the instant case and the Kentucky cases has existed between the Minnesota and the Kentucky cases. It was there said in part, beginning at page 468:

> "In the Jacobson case an order of the Railroad Commission of the State of Minnesota was considered which required two railroads of the State to make track connections. The statute of the State provided that all common carriers subject to its provisions should provide at all points of connection, crossing, or inter-

section at grade, where it was necessary for interstate commerce, ample facilities for transferring cars used in the regular business of their respective lines of road from other lines or tracks to those of any other carrier whose lines or tracks might connect with, cross or intersect their own, and shoud provide facilities for the interchange of cars, and for the receiving, forwarding and delivering of passengers, property and cars to and from their several lines and those of other carriers connecting therewith, without discrimination in rates and charges. And it was provided that one carrier should not be required to furnish its tracks, equipment or terminal facilities to another without reasonable compensation, the cost of connections to be proportionately divided between the carriers; and in case of disagreement, it was to be settled by the Commission. The roads were required to establish reasonable joint through rates at the demand of any person or of the Commission. And it was provided that carload lots should be transferred without unloading the cars unless it be done without cost to the shipper or receiver and without unreasonable delay.

Under this statute track connections were required to be made by the Wisconsin etc. R. R. Co., with an intersecting road. In its answer before the State Railroad Commission it alleged that to construct a connecting track would require it to go outside of its right of way and to condemn land for that purpose. In addition it urged that to compel such connection would violate the commerce clause of the Constitution and the Fourteenth Amendment. The Commission directed the connection to be made and its order was affirmed by the local state court to which an appeal was taken, as provided by the statute. This court affirmed the order, deciding that it was a proper exercise of the power

of regulation of the business of the companies. The reasoning to sustain this conclusion need not be reproduced. It rested upon the ultimate proposition that railroad companies "are organized for the public interests and to subserve primarily the public good and convenience." And deciding this to be the purpose of the creation of the roads and that government had power to secure it, it was held that where a provision for regulation is reasonable and appropriate, when considered with regard to the interests both of the company and of the public, the legislation is valid and will furnish ample authority for the courts to enforce it, even though eminent domain must be exercised or cost incurred. This principle, illustrated by the facts of the case, is opposite to the regulation under review. If the establishment of track connections by intersecting roads with its necessary accessories of sidings and switches be required and acceptance and delivery of loaded cars as a convenience of transportation, surely team tracks and sidings in Detroit and the delivery and acceptance of loaded cars are as much so.

This view is not opposed by Louisville etc. R. R. Co. v. Stock Yards Co. 212 U. S. 132. There a provision of the constitution of the State of Kentucky which required a carrier to deliver its cars to a connecting carrier was held invalid because it did not provide adequate protection for their return or compensation for their use. It was hence held that it amounted to a taking of property without due process of law. But the court was careful to say that "in view of the well-known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless trans-shipments or breaking bulk, in case of an unreasonable refusal by a carrier

to interchange cars with another for through traffic." The point of the decision was that compensation should be provided, and by the law. As it is expressed in the opinion, "The law itself must save the parties' rights, and not leave them to the discretion of the courts." This as a condition was explained, for it was said: "We do not mean, however, that the silence of the (State) constitution might not be remedied by an act of the legislature or a regulation by a duly authorized subordinate body if such legislation should be held consistent with the State constitution by the State Court." These conditions exist in the case at bar."

This case involved provisions of the same Act that is under consideration here. The Michigan Railroad Commission, proceeding under said Act, made an order relative to the rates to be charged by the Grand Trunk Railway Company upon its industrial and team tracks within the limits of the City of Detroit. An injunction was sought to restrain the operation of this order, in the Federal Court. Several of the contentions urged on behalf of the Grand Trunk Railway Company have been raised in this case in similar form by the plaintiff in error. For that reason certain language of the Court sustaining the validity of the statute and of the order made thereunder is pertinent. We quote from pages 464 and 465 of the report:

"It is contended that the order is an interference with interstate commerce. The contention is premature, if not without foundation. Section 7, before its amendment, required all railroads subject to it to establish switching connections between one another and to establish depots, and otherwise, for the interchange of traffic between their respective lines and for the re-

ceiving, forwarding and delivering of property and passengers to and from their several lines and those connecting therewith, and also for the transfer and delivery of cars without unreasonable delay or discrimination to any point on their own lines or on any connecting line, and forbidding discrimination in rates and charges. And the respective companies were required to draw over their roads the merchandise and cars of any other corporation or individual having connecting tracks when the cars are of proper guage, equipment, and properly loaded. Power was given to the Commission, if the compensation could not be agreed on by the roads, to fix such compensation. In other words, the duty of investigation was imposed on the Commission and the duty to render such judgment as was suitable to the situation and to award compensation to the carriers for any service required of them.

We have seen from the statement of facts that the first concern of the Grand Trunk was the right to charge what it pleased or discriminate between the services. Inconvenience to its interstate business seems to be an after thought. Besides, the fact of inconvenience is disputed. It is charged, it is true, in an affidavit filed by appellants; but there was a counter affidavit, and it was averred that the interchange of traffic required by the legislature of the State did not impede interstate business, but on the contrary facilitated it and intrastate commerce and relieved, not caused, congestion on the tracks of the various railroads in the city. And, as we have seen, the order of the Commission was suspensory only of the tariff of the appellants, not a final determination against it or of the conditions which might or might not justify it. It is too late in the day to question the competency

of a State to create a commission and to give it the power of regulating railroads and necessarily of investigating the conditions upon which regulation may be directed. If a judicial interference is sought with the exercise of such power it must be clearly shown to have been transcended, not left as a conclusion from the balancing of conflicting affidavits, or even, it may be, as held by the District Court, on ex parte affidavits. Courts are reluctant to interfere with the laws of a State or with the tribunals constituted to enforce them. Doubts will not be resolved against the law, nor the decision of its tribunals prevented or anticipated unless the necessity for either be demonstrated. Upon these principles the District Court acted, and rightly acted."

We also desire to call the attention of the Court to the case of

Southern Pacific Company vs. Campbell, 230 U. S. 537;

While the decisions of this Court seem to cover every phase of the proposition involved in the instant and constitute a complete refutation of the arguments urged against the Michigan statute, we desire to call attention to the decisions of the courts of last resort of several states in which the question here in issue has been involved. These decisions are practically uniform and indicate unmistakably the trend of judicial opinion throughout the country. We cite the following:

Matter of Stillwater Street Railway Co. v. The Boston & Massachusetts Railroad Company, 171 N. Y. 589;

Pittsburg etc. Ry. Co. vs. Hunt, et al (Ind.) 86 N. E. 328;

VanDalia Railroad Co. vs. Railroad Commission of Indiana, 101 N. E. 85;

Railroad Commission vs. Northern Alabama Railway Company, (Ala.) 62 So. 749;

State ex rel Great Northern Railway Company vs. Public Service Commission, (Wash.), 137 Pac. 132;

State ex rel Chicago etc. Railway Co. vs. Public Service Commission, (Wash.) 137 Pac. 1057;

City of Emporia vs. Atchison etc. Railway Co. (Kan.) 129 Pac. 161;

Colorado & Southern Railway Co. vs. State Railroad Commission (Colo.) 129 Pac. 506.

The New York case above cited is of particular interest because involving the question of establishing a physical connection between a street railway company and a steam road "in order to facilitate the free interchange of cars between the two roads." It was strongly urged on behalf of the respondent that it was not within the terms of the statute, and that to compel such connection with an electric railway line would impose an undue hardship. It is true that the street railway company was organized and incorporated under the general railroad Act of the State. It is difficult to see, however, wherein this fact would serve to distinguish the case from the one at bar. No question is presented here as to the authority of the Detroit United Railway Company to interchange cars with the plaintiff in error. It is assumed that it has such right and we believe that there is no possible chance for a doubt upon this point. Commenting upon the difference in the character of the two roads in the New York case, the Court said, in part:

> "If one electric road were seeking a connection with another road operated by the same power, it would

hardly be claimed that the provisions of section 12 did not apply. It is practically conceded that electric roads may be united with other roads of the same character and operated by the same power. But the statute has not limited the courts to the requiring of intersections and connections between roads of the same character. Very likely, electric roads tendering cars to steam roads for transportation should only offer those properly equipped with brakes and couplers, so that they may be taken and transported readily and safely. It may be that additional regulations will become necessary in order that equal privileges, accommodations and facilities may be afforded in connecting and intersecting roads, but all this may be controlled by the board of railroad commissioners, who, under the provisions of section 35, to which we have referred, is given full authority in the premises.

It is said that the rights of the public in the streets and highways of our cities, towns and villages should be protected and that cars loaded with merchandise and freight should not be permitted to be run over street surface railroads. It may be that additional regulations will become necessary in order that equal privileges, accommodations and facilities may be controlled by the board of railroad commissioners, who, under the provisions of section 35, to which we have referred, is given full authority in the premises.

It is said that the rights of the pubic in the streets and highways of our cities, towns and villages should be protected and that cars loaded with merchandise and freight should not be permitted to be run over street surface railroads. It may be that additional regulations should be provided either by statute or by ordinance, limiting the time in which cars of this character should be permitted to run over street surface

railroads, especially in cities and large villages; but that the power exists to run such cars is no longer an open question in this court. This question was elaborately considered in the case of DeGrauw v. Long Island Electric Railway Company (43 App. Div. 502), which case was affirmed in this court on the opinion below (163 N. Y. 597)."

In the Indiana case, reported in 86 N. E. Rep., the appellant sought to enjoin the enforcement of an order made by the Railroad Commission requiring the construction of an interchange track connecting the road of the appellant with that of another company and further requiring the two companies to interchange business in carload lots. It was urged, as in the instant case, that the property of the appellant was taken without just compensation and without due process of law. The order of the Commission commanded the two roads involved to accept both loaded cars and empty cars when tendered thereto and to transport the same. The provision of the statute directly involved was apparently designed to accomplish the same purpose as is the Michigan Act and read as follows:

"All railroad companies doing business in this state shall, upon the demand of any person or persons interested, establish reasonable joint rates for the transportation of freight between points upon their respective lines within this state, and shall receive and transport freight and cars over such route or routes as the shipper may direct. Carload lots shall be transferred without unloading into other cars, unless such unloading into other cars shall be done without charge therefor to the shipper or receiver of such carload lots, and unless such transfer be made without unreasonable delay; and less than carload lots shall be transferred

into the connecting railway's cars at cost, which shall be included in and make a part of the joint rate adopted by such railway companies, or established in this act."

Under the authority of the Jacobson case and other decisions of this Court it was held that the constitutional objections urged against the order of the Commission and the statute upon which it was based were without foundation. It was pointed out that if the two companies could not agree as to the expense of constructing the track and other interchange facilities application might be made to the Commission in order that the matter might be determined. It was suggested also that the establishment of physical connections and the consequent interchange of cars is really a duty owed by the carrier to the public under the common law, and that therefore the statute was rather declaratory of an existing obligation than creative of a new duty or obligation. In other words the enactment involved was an attempt on the part of the Legislature to make certain, definite and enforceable a previously existing obligation uncertain in its nature, and left to the common carrier to perform or not as its sense of duty might determine.

In the Alabama case above cited, reported in the 62 Southern Reporter, the State Railroad Commission had made an order directing two railroad companies to establish and maintain a union depot at a designated location, the site therefor to be acquired by purchase or condemnation. It was urged that the complainant was deprived of his property without due process of law. In passing upon this question it was pointed out that both companies would only benefit by the establishment of the union station and that the rights of the public, which are paramount in such a case, would be subserved thereby. The order was therefore upheld, the case not being one requiring the payment of money by way of compensation and the complainant in the case being afford-

ed an adequate remedy under the statute by which the determination of the Commission upon the facts might be reviewed.

In the Washington case cited above, reported in 137 Pacific Reporter 132, the validity of a statute authorizing the Public Service Commission to order that carload freight should be carried by different roads without being transferred from the originating cars was under consideration. The statute, however, made provision for the payment of compensation in proper cases, and likewise gave a right of review before a proper court to any person or corporation aggrieved by an order of the Commission. The Kentucky Stockyards cases were commented on by the Court and differentiated on the ground that the Washington statute safe-guarded the rights of all parties who might be concerned and permitted compensation for any loss that might be found to have been incurred by any common carrier as the result of the carrying out of an order. In conformity with the holdings of this Court as well as with the decisions of other States the constitutionality of the Act was upheld as against the objections urged. The case therefore is directly in point.

It is respectfully submitted that the prior decisions of this Court hereinbefore cited and discussed have foreclosed every material question that can be raised on behalf of the plaintiff in error. The right of a State, under the Federal Constitution, to enact measures of the character in question, designed to protect the public by requiring common carriers to render adequate services is no longer a debatable proposition. While in one sense of the word the property of a railroad company is private, yet it is charged with the proper performance of a public function and it is not only the right, but the duty, of a State granting privileges to common carriers to provide regulations and some method of supervisory control by which such performance can be enforced. We do not contend that it would be competent to direct the taking of the property of one common carrier and the giving thereof

to another arbitrarily. However, this is not the question involved in the instant case. The sole proposition is, rather, the authority of a State to require that a species of property charged with the performance of a public duty shall be interchanged temporarily by different railroad companies whenever it is found that such interchange is necessary to insure adequate shipping service to the public. As a condition precedent to such interchange compensation may be awarded under the Michigan statute if either carrier is found to sustain a loss. Any party aggrieved in this respect by the order of the Commission may have the determination reviewed in a court of competent jurisdiction by observing the procedure outlined in the Act. In the present case no such review was sought by the plaintiff in error and thus it was impliedly admitted that the finding of the Michigan Railroad Commission upon the facts was correct that no financial loss would be suffered by either the plaintiff in error or the Detroit United Railway Company. The inference is unavoidably that both companies would in fact be benefited by the proposed interchange of cars. Indeed, the physical connection has already been made. True, under protest from the plaintiff in error, but nevertheless, the physical connection has been installed. The plaintiff in error and the Detroit United Railway Company having complied with that part of the order. The plaintiff in error refused to comply with the balance of the order and has so far as this record discloses failed to attend any agreement between it and the Detroit United Railway Company and has failed to file any tariffs. Defendant's in error remedy was therefore by mandamus, that the putting into force of this order would not only provide adequate service for the shippers in this territory, but would also prove a matter of profit to the railroad company is not denied. Upon this record the facts are undisputed. Plaintiff in error has utterly failed to make a showing that any property has

been taken or that any loss of any nature or description would be suffered as the result of compliance of the order of the Railroad Commission.

It is respectfully submitted therefore that there is no error in the case and that the decision of the Michigan Supreme Court sustaining the validity of the statute should be affirmed.

GRANT FELLOWS,

Attorney General,

Attorney for Defendant in Error.

No. 23489.

FILED
NOV 28 1914
JAMES D. MAHER

Supreme Court of the United States

OCTOBER TERM, 1914.

NO. 91.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE MICHIGAN RAILROAD COMMISSION,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

FRANK E. HORTON,
Attorney for Plaintiff in Error.

HENRY RUSSEL,
Of Counsel.

DETROIT:
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1914.

NO. 23489.

Supreme Court of the United States

THE MICHIGAN CENTRAL RAILROAD COMPANY,
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Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Reply of Plaintiff in Error to Brief for Defendant in Error.

I.

THE RULE THAT THIS COURT WILL ADOPT THE CONSTRUCTION OF THE STATE COURT PLACED UPON AN ACT OF THE LEGISLATURE.

We have no controversy with the cases cited and the general rule stated on pages 10 to 12 of the Attorney General's brief, but submit that it is equally well established that if the construction given by the state court to the act of the legislature, or the application thereof under the order of the Michigan Railroad Commission, violates the provisions of the Federal Constitution, this court will exercise its corrective power in that behalf.

II.

THE RIGHT TO REQUIRE PHYSICAL CONNECTION.

This matter is discussed somewhat on pages 12 to 20 of the brief. As the physical connection has been made the question of authority to make the order in that respect is not presented by this record.

III.

The Interchange of Cars.

The point at issue in this respect is, can the Michigan Central be required to make delivery in its own cars, or cars under its control, off from its own line and upon the line of a connecting road, and not as the Attorney General seems to think, can it be required to transport cars tendered to it by the Detroit United Railway, or can the Detroit United Railway be required to transport cars tendered to it by the Michigan Central.

The case of *Chicago, Milwaukee & St. Paul vs. Iowa*, 233 *U. S.*, 234, cited by the Attorney General, does not determine the question presented by plaintiff in error. At best it is but a ruling that the carrier may be required to transport cars suitable for transportation over its line when tendered to it. The point made by plaintiff in error was expressly reserved, as the court said, at page 345:

> "No question, however, is presented here as between the shippers and *the owners of the cars*, and no actual interference with interstate commerce is shown."

In this case the Michigan Central as the owner of the cars, or as having in its control the "foreign cars" received in interstate commerce which it obtains under contract relations with the foreign roads and under which contract it has no authority or permission to grant the use thereof to the Detroit United Railway Company (pp. 44, 36-37) is here protesting and claiming that to compel it to turn its property over to the Detroit United Railway for the use of the latter violates the law of he land.

Wisconsin, etc., R. Co. vs. Jacobson, 179 *U. S.*, 287, decided no more than the roads could be compelled to install physical connection. The ruling is summed up on page 301 as follows:

> "As we have said, it is unnecessary in this case to determine the question of the validity of the whole act with regard to all its provisions and details. We need express no opinion upon that subject. We simply here determine that the judgment actually rendered, directing this track connection be made and thus affording track facilities at Hanley Falls, does not violate the constitutional rights of the plaintiff in error."

There can be no mistaking this view of the court for it is referred to in *Central Stock Yards vs. Louisville & Nashville, etc. R. R. Co.*, 192 *U. S.*, 568, *at* 571.

> "All that was decided in *Wisconsin, Minnesota & Pacific R. R. vs. Jacobson*, 179 *U. S.*, 287, was that by statute two railroad companies might be required to make track connections."

Grand Trunk Railway Co. vs. Michigan Railroad Commission, 231 *U. S.*, 457. This case does not rule the contention made by plaintiff in error. It decided in short

(a) That a transportation service might begin and end within the limits of a city.

(b) That a carrier was obligated to receive and transport a car *tendered* to it by a connecting carrier at a junction point within the city limits.

(c) That the Michigan statute provided compensation to the receiving carrier for such transportation service.

The contention made by the plaintiff in error in the instant case was not before the court in any manner, nor was it discussed.

Stillwell Street Railway Co. vs. Boston & Mass. R. R. Co., 171 *N. Y.*, 589, was a simple case of ordering physical connection between tracks of companies organized under the General Railroad Law. The fact that one was operated by electricity as a motive power is immaterial. The question of the use of cars, interchange of traffic, was not passed upon nor before the court for decision.

Pittsburgh, etc. Ry. Co. vs. Hunt, 171 *Ind.*, 192 (86 *N. E.*, 328). The point at issue was the authority of the Railroad Commission to compel the construction of an interchange track as a means of physical connection between the roads. The statute invoked contained many regulations on the subject of interchange traffic and use of cars, but all questions on these latter subjects were reserved as the Railroad Commission had made no order in that regard. It should be noted, however, that the statute expressly recognized the right of a carrier to maintain traffic upon its own line by furnishing its own cars where it could reach the destination point reached by a competitive company.

The Railroad Commission of Alabama vs. Northern Alabama Ry. Co., 62 *So. Rep.*, 749, was an action to review an order of the commission requiring the construction of a Union Station, and *City of Emporia vs. Atchison, etc. Ry. Co.*, 88 *Kas.*, 611 (129 *Pac.*, 161) was a case of an ordinance requiring the railroad at its own expense to construct a subway through an embankment crossing a public street, and *Vandalia R. Co. vs. Railroad Commission*, 101 *N. E. Rep.*, 85 inquired into the validity of a statute requiring the railroad to substitute a high power headlight for those commonly in use.

The orders of the commissions and the city in these cases were but an ordinary exercise of the police power and in no way involved a taking of property as in the instant case.

In *State ex rel Chicago, etc. Ry. Co. vs. Public Service Commission*, 77 *Wash.*, 529 (137 *Pac.*, 1057) the commission had ordered the railroad to construct a side track on its own property which would be open to public use, the particular shipper asking for the construction being obligated to pay the expense in the first instance. We see nothing in this except the ordinary use of police power.

In *Colorado, etc. Co. vs. Railroad Commission*, 54 *Colo.*, 64 (129 *Pac.*, 506) the material issue was the authority of the Railroad Commission to compel the railroad to operate both passenger and freight trains over a branch of its road which could be operated only at a loss. The order was valid under the rules laid down by this court in *Atlantic Coast Line vs. North Carolina Commission*, 206 *U. S.*, 1.

State ex rel Great Northern vs. Public Service Commission, 76 *Wash.*, 625 (137 *Pac.*, 132) is distinctly a case in favor of the contention of plaintiff in error. The commission had established joint rates and through routes between points on the Northern Pacific which were within the switching district of Tacoma to other points on the Great Northern and Chicago, Milwaukee & Puget Sound, each of the latter companies having physical connection with the Northern Pacific in the Tacoma switching district. Prior to this there had been an additional local freight charge for the movement over the Northern Pacific to the junction with the other lines. The court in sustaining the order of the commission pointed out (pages 632, 634) that the statute of Washington had been framed along the lines pointed out by this court in the *Stock Yards Cases*, and that the commission was directed to and did *before* making the order, not only fix rates and the route, but made rules and reg-

ulations for the expeditious and safe return of and as well proper compensation for cars employed in the interchange service. The statute is set out in full on pages 630-631.

The Washington statute contained the very elements which are lacking in the Michigan statute. The order of the Michigan Railroad Commission does not even attempt to provide for any of these necessary items.

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HENRY RUSSEL,
Of Counsel.

MICHIGAN CENTRAL RAILROAD COMPANY *v.* MICHIGAN RAILROAD COMMISSION.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 91. Submitted December 1, 1914.—Decided March 8, 1915.

A State, in virtue of its authority to regulate railroads as public highways, may, in a proper case, require two railroad companies to make a connection between their tracks so as to facilitate interchange of traffic, without violating rights of the company secured by the Federal Constitution. *Wisconsin R. R. Co.* v. *Jacobson*, 179 U. S. 287.

A State, acting within its jurisdiction and not in hostility to any Federal regulation of interstate commerce, may compel a carrier to accept loaded cars from another line and transport them over its own. *Chi., Mil. & St. P. Ry.* v. *Iowa*, 233 U. S. 344.

A State may on reasonable conditions require a carrier to permit its empty or loaded cars to be hauled from its line upon a connecting line for purposes of loading or delivery of intrastate freight and to permit cars of other carriers loaded with such freight consigned to points on the connecting line to be hauled from its line upon the connecting line for purposes of delivery.

The common law is subject to change by legislation, and so *held* that a State may require a carrier, within reasonable bounds of regulation in the public interest, to permit its equipment to be hauled off its line by other carriers, although it was not bound to permit the same at common law.

It is a matter of common knowledge that interchange of freight cars between carriers is the usual practice; and a state statute requiring such interchange as to intrastate commerce is not so unreasonable as to amount to a taking of property without due process of law.

An order of a state railroad commission requiring carriers to interchange freight cars for intrastate freight is to be read in the light of the opinion delivered by the Commission and as so read, the order involved in this case is not unreasonable nor does it take the property of the carriers without due process of law.

An order of a state railroad commission requiring carriers to exchange freight and passengers in accordance with the provisions of the act establishing the Commission which has been construed by the state court as relating only to intrastate commerce, because the jurisdiction of the Commission is limited thereto, *held* not to disregard the needs of interstate commerce or to be a burden thereon, and also *held*

this court presumes, until the contrary appears, that the state court will not so construe or enforce the order as to interfere with or obstruct interstate commerce.

An order of the Michigan State Railroad Commission requiring two connecting railroads to make physical connection for transfer of intrastate business including loaded freight cars and empty cars being returned or forwarded for being loaded, *held* within the power of the State and not to a taking of the property of the carriers without due process of law or an interference with and regulation of interstate commerce. *Central Stock Yards* v. *Louis. & Nash. R. R.*, 192 U. S. 568, and *Louis. & Nash. R. R.* v. *Stock Yards*, 212 U. S. 132, distinguished.

168 Michigan, 230, affirmed.

THE facts, which involve the validity of an order of the State Railway Commission of Michigan requiring a railway with respect to intrastate traffic to interchange cars, freight and passengers with another railway, are stated in the opinion.

Mr. Frank E. Robson and *Mr. Henry Russell* for plaintiff in error:

Act 300 of the Public Acts of 1909 of Michigan recognizes and preserves the distinctions which obtain in Michigan between street railways and railroads. See Act 312.

Railroad is used as meaning corporations organized under the general railroad law, and street railways as meaning those organized under the street railway act or other similar laws.

Railroads broadly and distinctly differ from street railways, and it has always been the policy of the legislature of Michigan to maintain this classification.

A street railway is constructed and operated on the public highways under the consent of the municipalities (§ 13, Street Railway Act, § 6446, C. L., 1897, App'x A, p. 44), and is not an additional servitude and may be constructed without compensation to abutting owners. *Detroit &c. Ry.* v. *Mills*, 85 Michigan, 634, 652–655; *Nichols* v. *Railway*, 87 Michigan, 361, 368–369, 370–1; *People* v. *Railway*, 92 Michigan, 522, 524; *Dean* v. *Railway*, 93

Michigan, 330; *Detroit &c. Railway* v. *R. R. Commissioner*, 127 Michigan, 219, 230; *People* v. *Eaton*, 100 Michigan, 208–211; *Austin* v. *Detroit &c. Ry.*, 134 Michigan, 149; *Mannel* v. *Detroit &c. Ry.*, 139 Michigan, 106; *Ecorse* v. *Jackson &c. Ry.*, 153 Michigan, 393.

A railroad before constructing its railway upon a public street or highway must obtain the consent of the municipality and pay damages and compensation to abutting owners (subd. 5, § 9, General R. R. Law, § 6234, C. L., 1897). A railroad is an additional servitude. Cases *supra* and *G. R. & I. R. R.* v. *Heisel*, 38 Michigan, 62; *S. C.*, 47 Michigan, 393; *Cooper* v. *Alden*, Har. Ch. 72; *Hoffman* v. *Flint &c. Ry.*, 114 Michigan, 316; *Nichols* v. *Railway*, 87 Michigan, 361, 372; *Keyser* v. *Lake Shore R. R.*, 142 Michigan, 143.

Under §§ 19, 25 and 28, Art. 8, State Constitution, 1909, the control of the public highways is expressly reserved to and placed in the cities, villages and townships. Even under the constitution of 1850 the right of control over the highways by municipalities was absolute. *Detroit* v. *Railway*, 95 Michigan, 460; *Monroe* v. *Detroit &c. Ry.*, 143 Michigan, 315; *Attorney General* v. *Toledo Ry.*, 151 Michigan, 473.

The decisions of the Michigan Supreme Court have long recognized the policy of the legislature, and declared the well-defined distinction between railroads and street railways. *Grand Rapids R. R.* v. *Heisel*, 38 Michigan, 62; *Ecorse* v. *Jackson Ry.*, 153 Michigan, 393; *Mason* v. *Lansing R. R.*, 157 Michigan, 1, 18.

This distinction has also been recognized in the matter of taxation of railroads and street railways, *Detroit* v. *Mfrs. R. R.*, 149 Michigan, 530; and as well in the application of the criminal statutes relating to railroads, *People* v. *Beebehyser*, 157 Michigan, 239; and see *Monroe* v. *Detroit &c. Ry.*, 143 Michigan, 315.

This act of the legislature must be considered a part of

the charter of the railway company. *Van Etten* v. *Eaton*, 19 Michigan, 187; *Attorney General* v. *Perkins*, 73 Michigan, 303; *Dewey* v. *Central Car Co.*, 42 Michigan, 399; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 459; *Central Transp. Co.* v. *Pullman Co.*, 139 U. S. 24, 48; *Orr* v. *Lacey*, 2 Doug. 230, 255; *Day* v. *Spiral Buggy Co.*, 57 Michigan, 146; and see *Nichols* v. *Railway*, 87 Michigan, 361, 370.

For definitions of "belt line" and "terminal railroads" and the manner in which they are used in Michigan, see *Bridwell* v. *Gates City Co.*, 127 Georgia, 520; *State* v. *Martin*, 51 Kansas, 462, 478; *Coltier* v. *Railroad*, 113 Tennessee, 101; *Diebold* v. *Kentucky Traction Co.*, 117 Kentucky, 146, 152.

Subdivision b, § 7, Act 300, is invalid under the due process of law provision of the Fourteenth Amendment. As construed by the Commission and the state court it requires the railroad to deliver its cars to the railway company for the use of the latter company, and makes no provision for the paramount needs of the railroad of its own equipment, nor for its prompt return, nor compensation therefor. It also requires the railroad company to make delivery of property transported by it to a place off from its right of way which is not under its control. *Atchison &c. R. R.* v. *Denver &c. R. R.*, 110 U. S. 667, 681.

The statute does not require the Michigan Central to accept such passengers on through tickets issued by the Detroit United, or to accept freight on a through billing. The statute in substance expressly states that cannot be required, and unless there is language in the statute which legally requires a terminal delivery on the line of the street railway, the relation between themselves is that of the common law. The Michigan Central is not bound to carry beyond its own line, nor to enter into contracts for through routes. *Atchison &c. Ry.* v. *Denver &c. Ry.*, 110 U. S. 667, 680, 681–682, 683; *Oregon Short Line* v. *Nor.*

Pac. R. R., 51 Fed. Rep. 465; *S. C.*, 61 Fed. Rep. 158; *Little Rock &c. R. R.* v. *St. Louis &c. R. R.*, 41 Fed. Rep. 559; *S. C.*, 59 Fed. Rep. 400; 63 Fed. Rep. 775; *Little Rock &c. R. R.* v. *East Tenn. &c. R. R.*, 47 Fed. Rep. 771, 781; *Prescott* v. *Atchison &c. Ry.*, 73 Fed. Rep. 438; *Chicago City Ry.* v. *Chicago*, 142 Fed. Rep. 844.

As construed by the Commission and the state court the statute becomes a bald command that the Michigan Central turn its property over to the Detroit United for the use of the latter without compensation to it and without reasonable rules under which such use of the property may be had. This is invalid. *Central Stock Yards* v. *Louis. & Nash. R. R.*, 118 Fed. Rep. 113; *S. C.*, 192 U. S. 568, 571.

See also cases *supra*, and *Chicago N. W. Ry.* v. *Osborne*, 52 Fed. Rep. 912, 915; *St. Louis Drayage* v. *Louis. & Nash. R. R.*, 65 Fed. Rep. 39; *Gulf &c. Ry.* v. *Miami S. S. Co.*, 86 Fed. Rep. 407, 416; *Ilwaco &c. Ry.* v. *Oregon &c. Ry.*, 57 Fed. Rep. 673; *Express Company Cases*, 117 U. S. 1, 29; *Louis. & Nash. R. R.* v. *West Coast Naval Stores*, 198 U. S. 483, 497.

A railway cannot be compelled to deliver its cars to private sidings or spur tracks. *Mann* v. *Pere Marquette R. R.*, 135 Michigan, 210, 219; *McNeill* v. *Southern Railway*, 202 U. S. 543, 561; *Central Stock Yards* v. *Louis. & Nash. R. R.*, 118 Fed. Rep. 113.

The order of the Michigan Railroad Commission of June 5, 1908, is invalid because founded upon an invalid law. The action of the Commission was arbitrary and unreasonable. It does not undertake to provide a reasonable compensation for the use of its cars taken, or for loss, damage to, or detention thereof, or for the needs of the railroad with respect to such cars, or for their prompt return. *Oregon &c. R. R.* v. *Fairchild*, 224 U. S. 510, 523; *United States* v. *Balt. & Ohio S. W. Ry.*, 226 U. S. 14, 20.

The use of property is a taking in a constitutional sense

in the State of Michigan. *Grand Rapids Co.* v. *Jarvis*, 30 Michigan, 308, 320.

The rule is the same, irrespective of any written constitutional provision.

It is not enough that plaintiff in error be turned over to its action at law for its remedy to obtain compensation, nor can it be required to accept anything other than a present adequate fund which is placed under its control and demand at substantially the time of the taking of the property. 2 Lewis on Eminent Domain, 3d ed., § 680; *Waterbury* v. *Platt*, 76 Connecticut, 435; *Bloodgood* v. *Mohawk &c. R. R.*, 18 Wend. 218; *Attorney General* v. *Old Colony &c. R. R.*, 160 Massachusetts, 62, 90.

Section 7, subd. b, of the act of 1909, as construed by the Railroad Commission and the state court, and the orders made in pursuance thereof, operate as a burden upon and interference with interstate commerce, as it requires delivery of such cars under all circumstances and without excuse and without reference to the demands of interstate commerce. *McNeill* v. *Southern Ry.*, 202 U. S. 543, 561; *Chicago &c. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426, 433; *St. Louis S. W. Ry.* v. *Arkansas*, 217 U. S. 136, 149; *Houston &c. Ry.* v. *Mayes*, 201 U. S. 321, 328.

Mr. Grant Fellows, Attorney General of the State of Michigan, for defendant in error.

Mr. Justice Pitney delivered the opinion of the court.

This writ of error brings under review a judgment of the Supreme Court of Michigan (168 Michigan, 230), awarding a peremptory writ of mandamus directing plaintiff in error, with respect to intrastate traffic, to interchange cars, carload shipments, less than carload shipments, and passenger traffic with the Detroit United Railway at the point of physical connection between the tracks

of the two companies in the village of Oxford in that State.

The Michigan Railway Commission, defendant in error, is a public administrative body, continued and existing under Act No. 300 of the Public Acts of 1909 as the successor of a similar commission established by Act No. 312 of the Public Acts of 1907. It has ample regulative powers, originally conferred by the 1907 act and continued by the 1909 act without modification material to the present controversy.[1] The mandamus proceeding was based

[1] Michigan Public Acts 1907, No. 312.

"SEC. 7. . . . (b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks, or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments, and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: *Provided*, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes.

"(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: *Provided*, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: *Provided further*, If the corporations cannot agree upon the times at which the cars shall be drawn, or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations, and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised. . . .

upon an order made by the former Commission in the year 1908, which, it is admitted, was preserved by § 49 of the 1909 act.

"SEC. 24. . . . (b) The commission may at any time, upon application of any person or any railroad, and upon notice to the parties interested, including the railroad, and after opportunity to be heard as provided in section twenty-two, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders.

"SEC. 25. All rates, fares, charges, classifications and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section twenty-six of this act, or until changed or modified by the commission as provided for in paragraph (*b*), section twenty-four of this act.

"SEC. 26. (a) Any railroad or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within sixty days commence an action in the circuit court in chancery against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates fixed is unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpœna. The commission shall file its answer, and on leave of court any interested party may file an answer to said complaint, whereupon said action shall be at issue and stand ready for hearing upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the circuit courts in chancery are hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the courts shall decide to be in accordance with the facts and the law.

* * * * * * * *

The Michigan Central Railroad Company is a corporation existing under the General Railroad Law of the State (Comp. Laws 1897, ch. 164, §§ 6223 *et seq.*), and as lessee operates a line of railroad extending from Detroit to Bay City and passing through the village of Oxford, all in

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"(c) If, upon the trial of said action, evidence shall be introduced by the complainant which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend and rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

"(d) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

"(e) Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or, if no term is then pending, shall take precedence of a different nature (*sic*), except criminal cases at the next term of the supreme court.

"(f) In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be."

The foregoing provisions were substantially reënacted in Public Acts 1909, No. 300, as §§ 7 b and c, 24, 25, 26 a, c, d, and e respectively.

the State of Michigan; this line being part of a railroad system extending through that State and into adjoining States and the Dominion of Canada, and over which the company transports passengers and property in interstate and foreign, as well as intrastate commerce. The Detroit United Railway Company is a corporation organized and existing under the Street Railway Act (Comp. Laws 1897, ch. 168, §§ 6434 *et seq.*), and operates an interurban electric railway extending from Detroit to the city of Flint, and likewise passing through the village of Oxford. Between Oxford and Flint, which are 28 miles apart, the line passes through the villages of Ortonville, Goodrich, and Atlas, distant respectively 10, 16, and 18 miles from Oxford.

In the early part of the year 1908 petitions were filed before the Commission by certain merchants resident in Ortonville and Goodrich, asking that a physical connection be established between the tracks of the Michigan Central and Detroit United at Oxford for the interchange of cars, carload shipments, less than carload shipments, and passenger traffic. The Michigan Central answered denying that it would be practicable to construct and maintain such a physical connection, and denying the authority of the Commission to order any such connection for the purposes mentioned in the complaint. The Detroit United answered denying the practicability of interchanging carload shipments (supposing a physical connection to have been established), without unreasonable expenditure of money in changing its road and equipment. There was a full hearing, at which both companies were represented. The questions before the Commission were three: (a) Is a physical connection between the tracks at Oxford practicable; (b) Can the interchange of business be accomplished without endangering the equipment, tracks, or appliances of either party; and (c) Are the facts and circumstances such as to reasonably justify

the Commission in requiring such connection and interchange. The question of through billing was not involved. The Commission held that the statute in terms conferred upon it the authority which it was asked to exercise, and declined to pass upon the question of its validity, deeming that to be a judicial question and not within its province. It found the construction and maintenance of the connection between the tracks to be feasible and practicable, and the expense of construction approximately $500. Upon the evidence introduced and a personal inspection of the line of the Detroit United, the Commission found that line to be of standard gauge, with rails of the same pattern and weight as those used on many steam roads, and without heavy grades offering resistance to freight traffic, and that the handling of freight in steam railroad cars over that line was practicable and might be accomplished without endangering the equipment, tracks, or appliances of either company, and without involving either in unreasonable expense. Whether steam or electricity should be used as a motive power was declared to be a question to be solved by the Detroit United Company in the light of its own experience. The Commission also found the proposed interchange to be reasonable from the standpoint of the Michigan Central, and that it entailed small sacrifice to that company, which would have to expend its proportion of the amount necessary to install the connection, but would not be involved in further expenditure; and that the business to be derived from Ortonville, Goodrich, and the surrounding country *via* the Detroit United Railway and the proposed connection promised to be considerable in amount, making the Michigan Central a beneficiary by the connection; and held that under its charter it owed a duty as common carrier to the entire State, so that while required to give greatest consideration to those most accessible to its operations, it must further give as great consideration to those not immediately

upon its lines as was consistent with the other operations of the road. The result was an order, dated June 5, 1908, made under the provisions of § 7 b of the 1907 act, requiring the Michigan Central and Detroit United Companies on or before August 15 in the same year to connect their tracks at such point in the village of Oxford as they should between themselves agree upon as most desirable, and thereafter to interchange cars, carload shipments, less than carload shipments, and passenger traffic at that point, in accordance with the provisions of § 7; and declaring that if they should be unable to agree as to the point of connection the Commission would make a supplemental order determining its location. Such a supplemental order was afterwards made. These orders were duly served upon both companies, and neither instituted any proceeding to test their validity in the manner permitted by §§ 25 and 26 of the 1907 act. The physical connection between the tracks was installed and is still maintained by the companies, and no question is now made respecting this. But the Michigan Central complied, to the extent of installing the physical connection, under protest, particularly with respect to so much of the order as required the interchange of cars, carload and less than carload shipments, and passenger traffic at that point. The Detroit United is willing and able to accept cars and carloads of freight from the Michigan Central, to be delivered along the line of the Detroit United under a service similar to that offered by belt lines and terminal railroads in the same State, but the Michigan Central has hitherto refused and still refuses to deliver cars and carloads or less than carload shipments of freight in cars to the Detroit United for transportation to points upon its line. There is no controversy about the other parts of the order.

The issuance of the mandamus was opposed upon the ground (among others), that the Commission's order and the statutes purporting to authorize it were repugnant to

the Fourteenth Amendment, in that enforcement of the order would deprive the Michigan Central of its property without due process of law, and also upon the ground that the order amounted to an attempt to regulate and impose a burden upon interstate commerce contrary to § 8 of Article I of the Constitution of the United States. The Supreme Court of Michigan held that the statute authorized the making of such an order by the Commission, and that since plaintiff in error had failed to institute proceedings to review it under §§ 25 and 26 of the Act the questions of the practicability of the physical connection and of the interchange of traffic, as well as the reasonableness of the service required, were not open in the mandamus proceeding. It also held that the jurisdiction of the Commission was limited to intrastate traffic, and that its order in the present case must be deemed to be so limited.

The act establishing the Michigan Railroad Commission, as it stood after amendment by Public Acts 1911, No. 139, was under consideration in *Grand Trunk Ry.* v. *Michigan Ry. Comm.*, 231 U. S. 457, which dealt with the compulsory interchange of intrastate traffic at Detroit. With respect to judicial review, it will be observed that by § 25 (set forth in the margin, *supra*) the regulations prescribed by the Commission are to be treated as lawful and reasonable until found otherwise in an action brought for the purpose pursuant to the provisions of § 26, or until modified by the Commission as provided in § 24. Section 26 permits the railroad company or other party in interest, being dissatisfied with the Commission's order, to commence an action in the Circuit Court in chancery to set it aside on the ground of unreasonableness, with opportunity to introduce original evidence in addition to that which was submitted to the Commission. If new evidence is offered the court may refer it to the Commission for its consideration, and that body may thereupon

rescind or modify the original order. The court passes upon either the original or the modified order, and may affirm or set it aside in whole or in part, and make such other order as may be in accordance with the facts and the law. From its judgment there is an appeal to the Supreme Court. The respective functions of the Commission and the courts under this legislation were considered, in a rate case, by the state Supreme Court in *Detroit & Mackinac Ry.* v. *Michigan Railroad Comm'n*, 171 Michigan, 335, 346, and by this court in a subsequent case between the same parties, 235 U. S. 402, affirming 203 Fed. Rep. 864.

The argument submitted here in behalf of plaintiff in error has taken a wide range, many of the contentions being matters purely of local law, and these so interwoven with the discussion of Federal questions that it is somewhat difficult to distinguish them. It ought to be unnecessary to say that whether distinctions have heretofore been recognized, under the laws of Michigan, between "railroads" and "street railways"; whether the acts of 1907 and 1909 preserve or disregard these distinctions; and whether § 7 was intended to apply to both kinds of roads or to "railroads" only; are questions with which this court has no proper concern, they being conclusively disposed of by the decision of the state court of last resort in the present case. So, also, it is, for all purposes of our jurisdiction, established not only that the Commission in making the order, acted in the authorized exercise of the State's power of regulation, but that the two companies are legally competent to perform the duties thereby imposed upon them respectively.

That a State, in virtue of its authority to regulate railroads as public highways, may in a proper case require two companies to make a connection between their tracks so as to facilitate the interchange of traffic, without thereby violating rights secured by the Constitution of the United

States, is settled by the decisions of this court in *Wisconsin &c. R. R.* v. *Jacobson*, 179 U. S. 287, 296, 301; and *Oregon R. R. & N. Co.* v. *Fairchild*, 224 U. S. 510, 528.

That a State, acting within its jurisdiction and not in hostility to any Federal regulation of interstate commerce, may compel the carrier to accept loaded cars from another line and transport them over its own, such requirement being reasonable in itself, is settled by *Chi., Mil. & St. P. Ry.* v. *Iowa*, 233 U. S. 334, 344. In that case it was held there was no essential difference, so far as concerned the power of the State, between such an order and one requiring the carrier to make track connections and receive cars from connecting roads in order that reasonably adequate facilities for traffic might be provided.

It seems to us that the principle of these decisions sustains also the State's power to make a reasonable order requiring a carrier to permit empty or loaded cars owned by it to be hauled from its line upon the connecting line for purposes of loading or delivery of intrastate freight, and to permit the cars of other carriers loaded with such freight consigned to points on the connecting line to be hauled from its line upon the connecting line for purposes of delivery. This question was left undetermined in *McNeill* v. *Southern Railway*, 202 U. S. 543, 563, which had to do with a state regulation operating directly upon interstate commerce.

The contentions of plaintiff in error to the contrary will be briefly considered.

It is said that section 7 b of the 1907 act, as reënacted in 1909, under which the Commission's order was made, permits the use of suburban and interurban railroads for the handling of freight in carload lots in steam railroad freight cars only "in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes." And it is insisted that the

terms "belt line railroads" and "terminal railroads" have not been judicially construed by the Michigan courts, and, there being no finding by the Commission or the court upon the question, the order and judgment are in this respect indefinite. But the Commission in its petition for mandamus averred: "That belt line and terminal railroads within this State vary in length from a fraction of a mile to fifteen miles or more; that cars and carloads of freight are transported to and from industries located along the line of such belt or terminal railroads to the tracks of railroad companies with which said belt lines and terminal railroads are connected, under a local switching charge or tariff, and that through billing of freight as between other railroads and belt and terminal railroads is not customary or usual." And in the answer of the Railroad Company this was admitted as matter of fact, it being at the same time insisted "that said Detroit United Railway Company is not in fact or in law a belt line or terminal railroad corporation, nor authorized by law to act as such; nor are the line or lines of railway operated by it extending from the village of Oxford to the City of Flint and within the boundaries of said municipalities, belt or terminal railroads; nor can they in fact or in law be used as belt or terminal railroads may be or are now used; nor has said relator any power or authority to require this respondent to give the use of its tracks or terminal facilities for the purposes mentioned in said orders or otherwise." There is no question, therefore, as to the mode in which belt line and terminal railroads are in fact used, and so the statute and order are relieved from the charge of indefiniteness in this respect. As already shown, the decision of the state court of last resort is a conclusive response to the legal objections taken in the clause quoted from the answer.

It is said the statute as construed and enforced by the Commission and the Supreme Court is repugnant to the "due process" clause because it in effect requires a delivery

by the Michigan Central at points off its own lines. By its terms, however, the order does not require the Michigan Central to haul the cars to points on the Detroit United, but only to permit them to be hauled by the latter company. At common law a carrier was not bound to carry except on its own line, and probably not required to permit its equipment to be hauled off the line by other carriers. *A., T. & S. F. R. R.* v. *D. & N. O. R. R.*, 110 U. S. 667, 680; *Kentucky &c. Bridge Co.* v. *Louis. & Nash. R. R.*, 37 Fed. Rep. 567, 620; *Oregon Short Line* v. *Northern Pacific Ry.*, 51 Fed. Rep. 465, 472, 475; affirmed, 61 Fed. Rep. 158. But in this, as in other respects, the common law is subject to change by legislation; and, so long as the reasonable bounds of regulation in the public interest are not thereby transcended, the carrier's property cannot be deemed to be "taken" in the constitutional sense. *Minn. & St. Louis R. R.* v. *Minnesota*, 193 U. S. 53, 63; *Atlantic Coast Line* v. *N. Car. Corp. Com'n*, 206 U. S. 1, 19; *Grand Trunk Ry.* v. *Michigan Ry. Com.*, 231 U. S. 457, 470; *Wisconsin &c. R. R.* v. *Jacobson, supra; Chi., Mil. & St. P. Ry.* v. *Iowa, supra.*

The insistence that the property of plaintiff in error in its cars is taken by the order requiring it to deliver them to the Detroit United Railway involves, as we think, a fundamental error, in that it overlooks the fact that the vehicles of transportation, like the railroad upon which they run, although acquired through the expenditure of private capital, are devoted to a public use, and thereby are subjected to the reasonable exercise of the power of the State to regulate that use, so far at least as intrastate commerce is concerned. *Munn* v. *Illinois*, 94 U. S. 113. That it is not as a rule unreasonable to require such interchange of cars sufficiently appears from the universality of the practice, which became prevalent before it was made compulsory, and may be considered as matter of common knowledge, inasmuch as a freight train made up wholly

of the cars of a single railroad is, in these days, a rarity. In Michigan, car interchange has long been a statutory duty. Mich. Gen. Acts 1873, No. 79, § 15, p. 99; No. 198, § 28, p. 521; *Michigan Central R. R.* v. *Smithson*, 45 Michigan, 212, 221. And see *Peoria & P. U. Ry.* v. *Chicago, R. I. & P. Ry.*, 109 Illinois, 135, 139; *Burlington &c. Ry.* v. *Dey*, 82 Iowa, 312, 335; *State* v. *Chicago &c. Ry.*, 152 Iowa, 317, 322; affirmed, 233 U. S. 334; *Pittsburgh &c. Ry.* v. *R. R. Commission*, 171 Indiana, 189, 201; *Jacobson* v. *Wisconsin &c. R. R.*, 71 Minnesota, 519, 531; affirmed, 179 U. S. 287.

To speak of the order as requiring the cars of plaintiff in error to be delivered to the Detroit United "for the use of that company" involves a fallacy. The order is designed for the benefit of the public having occasion to employ the connecting lines in through transportation. The Detroit United, like the Michigan Central, acts in the matter as a public agency.

The contention that no provision is made for the paramount needs of plaintiff in error for the use of its own equipment, nor for the prompt return or adjustment for loss or damage to such equipment, nor for compensation for the use thereof, is not substantial. The order is to receive a reasonable interpretation, and according to its own recitals is to be read in the light of the opinion of the Commission, which shows that it is not intended to have an effect inconsistent with the other operations of the company. It was expressly found that there was no special ground for apprehending loss or damage to the equipment. Certainly the order does not exclude the ordinary remedies for delay in returning cars or for loss or damage to them. Nor does it contemplate that plaintiff in error shall be required to permit the use of its cars (or of the cars of other carriers for which it is responsible) off its line without compensation. The state court expressly held that § 7 c provides for reasonable compensation to the

carrier whose cars are used in the interchange. The finding of the Commission, approved by the court, was that the Michigan Central would merely have to expend its proportion of the amount necessary to install the connection between the two roads, and would be called upon for no further expenditure in the premises, and that the business to be derived by it from Ortonville, Goodrich, and the surrounding country *via* the Detroit United Railway, promised to be considerable in amount, and thereby the Michigan Central would be a beneficiary from the proposed connection and interchange. It was, we think, permissible for the court to find, as in effect it did find, that the benefits thus derived would include compensation for the use of the cars of the Michigan Central for purposes of loading and delivery along the line of the Detroit United. We are unable to see that any question as to the adequacy of the compensation was raised in the state court.

Plaintiff in error relies upon *Central Stock Yards* v. *Louis. & Nash. R. R.*, 192 U. S. 568, and *Louis. & Nash. R. R.* v. *Stock Yards Co.*, 212 U. S. 132. The former of these was an action in the Federal court and came here by appeal from the Circuit Court of Appeals. This court held as a matter of construction that the constitution of Kentucky did not require that the railroad company should deliver its own cars to another road. The second case was a review of the judgment of the court of last resort of the State. That court having held that the state constitution did require the carrier to deliver its own cars to the connecting road, it was contended that this requirement was void under the Fourteenth Amendment as an unlawful taking of property. This court said (212 U. S. 143): "In view of the well known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case of an

unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described. . . . We do not mean, however, that the silence of the constitution might not be remedied by an act of legislature or a regulation by a duly authorized subordinate body if such legislation should be held consistent with the state constitution by the state court." The case now before us is plainly distinguishable, as appears from what we have said. And, upon the whole, we see no sufficient ground for denouncing the regulation in question as either arbitrary or unreasonable.

There remains the contention that the statute and the order made in pursuance of it operate as a burden upon and interference with interstate commerce. That the order intrinsically applies only to intrastate traffic was held by the state court in this case, upon the ground that the jurisdiction of the Commission is thus limited; and in this the court did but follow its previous ruling in *Ann Arbor R. R.* v. *Railroad Commission*, 163 Michigan, 49. Therefore, the contention under the Commerce Clause is narrowed to the single point that the order requires the cars of the Michigan Central to be turned over to the connecting carrier "at all times and under all circumstances and without reference to the needs and demands of interstate commerce." But it seems to us that this is an unreasonable construction of the order. By its terms, as thus far construed by the state court, it merely requires the two companies to interchange cars, carload shipments,

less than carload shipments and passenger traffic, in accordance with the provisions of § 7 of the Act, that is to say, "in the same manner and under the same general conditions except as to motive power as belt line railroads and terminal railroads are now or may be used for like purposes." Manifestly, this involves no disregard of the needs of interstate commerce, and we must indulge the presumption, until the contrary is made to appear, that the State will not so construe or enforce the order as to interfere with or obstruct such commerce. *Ohio Tax Cases*, 232 U. S. 576, 591; *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 369. The recent decisions of this court, cited in support of the contention that the order interferes with interstate commerce (*Houston & Tex. Cent. R. R.* v. *Mayes*, 201 U. S. 321, 329; *McNeill* v. *Southern Railway*, 202 U. S. 543, 561; *St. Louis S. W. Ry.* v. *Arkansas*, 217 U. S. 136, 149; *Chi., R. I. &c. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426, 433); are so plainly distinguishable that no time need be spent in discussing them.

Judgment affirmed.